

# Exhibit KKK



**KENTUCKIANA**  
— COURT REPORTERS —

**CASE NO. 1:18-CV-03029**

**THOMAS SIERRA**

**V.**

**REYNALDO GUEVARA, ET AL.**

**DEPONENT:**

**NELSON ANDREU**

**DATE:**

**May 12, 2023**



✉ [schedule@kentuckianareporters.com](mailto:schedule@kentuckianareporters.com)

☎ 877.808.5856 | 502.589.2273

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION  
4 HON. JOHN Z. LEE  
5 HON. M. DAVID WEISMAN  
6 CASE NO. 1:18-CV-03029  
7

8 THOMAS SIERRA,  
9 Plaintiff

10  
11 V.  
12

13 REYNALDO GUEVARA, ET AL.,  
14 Defendants  
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22

23 DEPONENT: NELSON ANDREU

24 DATE: MAY 12, 2023

25 REPORTER: SYDNEY LITTLE

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>1</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS, THOMAS SIERRA, GERALDO</p> <p>4 IGLESIAS:</p> <p>5 Anand Swaminathan, Esquire</p> <p>6 Loevy &amp; Loevy</p> <p>7 311 North Aberdeen Street</p> <p>8 Third Floor</p> <p>9 Chicago, Illinois 60607</p> <p>10 Telephone No.: (312) 243-5900</p> <p>11 E-mail: anand@loevy.com</p> <p>12 (Appeared via videoconference)</p> <p>13</p> <p>14 ON BEHALF OF THE DEFENDANT, CITY OF CHICAGO:</p> <p>15 Catherine M. Barber, Esquire</p> <p>16 Rock Fusco &amp; Connelly, LLC</p> <p>17 321 North Clark Street</p> <p>18 Chicago, Illinois 60654</p> <p>19 Telephone No.: (312) 494-1000</p> <p>20 E-mail: cbarber@rfclaw.com</p> <p>21 (Appeared via videoconference)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">INDEX</p> <p>1</p> <p>2</p> <p>3 PROCEEDINGS</p> <p>4 DIRECT EXAMINATION BY MR. SWAMINATHAN</p> <p>5 CROSS-EXAMINATION BY MR. KIVETZ</p> <p>6</p> <p>7</p> <p>8</p> <p style="text-align: center;">EXHIBITS</p> <p>9 Exhibit</p> <p>10 1 - Expert Report of Nelson Andreu</p> <p>11 March 27, 2023</p> <p>12 2 - Thomas Sierra Investigation File</p> <p>13 RFC-Sierra 000111-000178</p> <p>14 3 - Expert Report of Thomas Tiderington</p> <p>15 4 - Invoices from Nelson Andreu to</p> <p>16 The Sotos Law Firm, P.C.</p> <p>17 December 1, 2022 and January 2, 2023</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">APPEARANCES (CONTINUED)</p> <p>1</p> <p>2</p> <p>3 ON BEHALF OF THE DEFENDANT, REYNALDO GUEVARA:</p> <p>4 Megan K. McGrath, Esquire</p> <p>5 Leinenweber Baroni &amp; Daffada LLC</p> <p>6 120 North LaSalle Street</p> <p>7 Suite 2000</p> <p>8 Chicago, Illinois 60602</p> <p>9 Telephone No.: (866) 786-3705</p> <p>10 E-mail: mkm@ilesq.com</p> <p>11 (Appeared via videoconference)</p> <p>12</p> <p>13 ON BEHALF OF THE DEFENDANTS, ERNEST HALVORSEN, ANTHONY</p> <p>14 WOJCIK, JOHN MCMURRAY, GEORGE FIGUEROA, EDWARD MINGEY,</p> <p>15 ROBERT BIEBEL, FRANCIS CAPPITELLI:</p> <p>16 Jeffrey R. Kivetz, Esquire</p> <p>17 The Sotos Law Firm, P.C.</p> <p>18 141 West Jackson Boulevard</p> <p>19 Suite 1240A</p> <p>20 Chicago, Illinois 60604</p> <p>21 Telephone No.: (630) 735-3300</p> <p>22 E-mail: jkivetz@jsotoslaw.com</p> <p>23 (Appeared via videoconference)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">STIPULATION</p> <p>1</p> <p>2</p> <p>3 The VIDEO deposition of NELSON ANDREU was taken at</p> <p>4 KENTUCKIANA COURT REPORTERS, 110 NORTH WACKER DRIVE,</p> <p>5 CHICAGO, ILLINOIS 60606, via videoconference in which</p> <p>6 all participants attended remotely, on FRIDAY the 12th</p> <p>7 day of MAY 2023 at 10:05 a.m. (CT); said VIDEO</p> <p>8 deposition was taken pursuant to the FEDERAL Rules of</p> <p>9 Civil Procedure 30(b)(6). The oath in this matter was</p> <p>10 sworn remotely pursuant to FRCP 30(b)(6).</p> <p>11</p> <p>12 It is agreed that SYDNEY LITTLE, being a Notary Public</p> <p>13 and Digital Reporter for the State of ILLINOIS, may</p> <p>14 swear the witness and that the reading and signing of</p> <p>15 the completed transcript by the witness is not waived.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE REPORTER: On record. My name is Sydney</p> <p>4 Little. I'm the online video technician and court</p> <p>5 reporter today, representing Kentuckiana Court</p> <p>6 Reporters, located at 110 North Wacker Drive,</p> <p>7 Chicago, Illinois 60606. Today is the 12th day of</p> <p>8 May 2023. The time is 10:06 a.m. Central. We are</p> <p>9 convened by videoconference to take the deposition</p> <p>10 of Dr. Nelson Andreu, in the matter of Thomas</p> <p>11 Sierra v. Reynaldo Guevara, et al., pending in the</p> <p>12 United States District Court for the Northern</p> <p>13 District of Illinois, Eastern Division, Case number</p> <p>14 118-CV-03029. Will everyone but the witness please</p> <p>15 state your appearance, how you are attending, and</p> <p>16 the location you're attending from, starting with</p> <p>17 Plaintiff's Counsel?</p> <p>18 MR. SWAMINATHAN: Anand Swaminathan for</p> <p>19 Plaintiff Thomas Sierra, appearing by Zoom from</p> <p>20 Chicago.</p> <p>21 MR. KIVETZ: Good morning. This is Jeff</p> <p>22 Kivetz on behalf of the individual defendants,</p> <p>23 except for Defendant Guevara, appearing via Zoom,</p> <p>24 from Chicago, Illinois.</p> <p>25 MS. BARBER: Catherine Barber for Defendant</p>	<p style="text-align: right;">Page 8</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Good morning, Mr. Andreu. How are you?</p> <p>3 A. Good morning, sir. How are you?</p> <p>4 Q. Good. Nice to see you again. You've given a</p> <p>5 deposition before, yes?</p> <p>6 A. Yes.</p> <p>7 Q. And how many times have you given depositions</p> <p>8 in your capacity as an expert?</p> <p>9 A. I believe three.</p> <p>10 Q. Okay. And how many times have you given</p> <p>11 depositions in your capacity as a law enforcement</p> <p>12 officer?</p> <p>13 A. Hundreds of times.</p> <p>14 Q. Florida is a depositions state, correct? Where</p> <p>15 there's depositions before criminal trials?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay. And so you've been deposed hundreds of</p> <p>18 times before criminal trials; is that fair?</p> <p>19 A. That's fair.</p> <p>20 Q. Okay. And so you understand how the</p> <p>21 deposition process works quite well; is that fair?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. I'll just go through the -- I'll go</p> <p>24 through those -- just how this works again, even though</p> <p>25 I know you know, it, but this is a question and answer</p>
<p style="text-align: right;">Page 7</p> <p>1 City of Chicago, also by Zoom in Chicago.</p> <p>2 MS. MCGRATH: Megan McGrath for Defendant</p> <p>3 Guevara, also by Zoom in Chicago.</p> <p>4 MS. FLEMING: Elizabeth Fleming on behalf of</p> <p>5 the individual defendants, except Defendant</p> <p>6 Guevara, appearing by Zoom in Chicago.</p> <p>7 THE REPORTER: Thank you. Dr. Andreu, will</p> <p>8 you please state your name for the record?</p> <p>9 THE WITNESS: Nelson Andreu.</p> <p>10 THE REPORTER: Thank you. And do all parties</p> <p>11 stipulate that the witness is, in fact, Nelson</p> <p>12 Andreu?</p> <p>13 MR. SWAMINATHAN: So stipulated by Plaintiff.</p> <p>14 MR. KIVETZ: Stipulated by the Defendants.</p> <p>15 MS. MCGRATH: So stipulated.</p> <p>16 THE REPORTER: Thank you.</p> <p>17 MS. BARBER: Agreed.</p> <p>18 THE REPORTER: Thank you. And sir, will you</p> <p>19 please raise your right hand? Do you solemnly</p> <p>20 swear or affirm that the testimony you're about to</p> <p>21 give will be the truth, the whole truth, and</p> <p>22 nothing but the truth?</p> <p>23 THE WITNESS: I do.</p> <p>24 THE REPORTER: Thank you. Counsel may begin.</p> <p>25 DIRECT EXAMINATION</p>	<p style="text-align: right;">Page 9</p> <p>1 session, please make sure that you give verbal answers</p> <p>2 so the court reporter can write it down, understood?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you understand that if I ask you a</p> <p>5 question, and you don't understand it, you're welcome to</p> <p>6 tell me that you don't understand the question and I'll</p> <p>7 rephrase it, fair?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And if you answer my question, I will</p> <p>10 assume you understood my question; is that fair?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. If you need to take a break, we can, of</p> <p>13 course, take a break, just answer any pending questions;</p> <p>14 is that fair?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Do you have any medi -- strike that. Do</p> <p>17 you have any medical conditions that would prevent you</p> <p>18 from being able to understand my questions and answer</p> <p>19 them today?</p> <p>20 A. No, sir.</p> <p>21 Q. Are you taking any medications that would</p> <p>22 impair your ability to understand my questions and</p> <p>23 answer them truthfully today?</p> <p>24 A. No, sir.</p> <p>25 Q. Okay. We don't have to make this a long</p>

<p style="text-align: right;">Page 10</p> <p>1 deposition, so let me just go through some questions</p> <p>2 that I think are -- came up in your Reyes deposition,</p> <p>3 and I think we can sort of short circuit them here. So</p> <p>4 did you have a chance to review the deposition</p> <p>5 transcript of your testimony in the Reyes case?</p> <p>6 A. No, sir. I have not.</p> <p>7 Q. Did you -- did -- you recall testifying as an</p> <p>8 expert in the Reyes case in a deposition, correct?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Is there anything that you said during</p> <p>11 the course of that deposition that you felt was</p> <p>12 misleading or inaccurate in any way?</p> <p>13 A. I don't believe so, but I -- I haven't had an</p> <p>14 opportunity to review it, and I would like to.</p> <p>15 Q. You said you would like to?</p> <p>16 A. Well, if -- if at all possible, yes.</p> <p>17 Q. Okay. Have you -- are you aware that there is</p> <p>18 a transcript of your deposition in the Reyes case?</p> <p>19 A. I assume there is, yes.</p> <p>20 Q. Have you requested a copy of it up to today?</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. At any point --</p> <p>23 MR. KIVETZ: Anand, do you have a copy of the</p> <p>24 transcript? We were understanding that nobody</p> <p>25 ordered it.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. So you think it's possible that you gave some</p> <p>2 untruthful or inaccurate testimony during that</p> <p>3 deposition?</p> <p>4 MR. KIVETZ: Objection. Form, misstates his</p> <p>5 testimony.</p> <p>6 THE WITNESS: I -- I wouldn't say untrue, but</p> <p>7 I -- in any event, I would like to -- to review it.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. Okay. And you haven't taken that opportunity</p> <p>10 between then and today; is that fair?</p> <p>11 MR. KIVETZ: Objection. Form. Because he --</p> <p>12 no -- there is no transcript available, but go</p> <p>13 ahead.</p> <p>14 THE WITNESS: That's correct.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Sitting here today, is there anything that you</p> <p>17 said during that deposition that you believe to be false</p> <p>18 or inaccurate?</p> <p>19 MR. KIVETZ: Objection. Form.</p> <p>20 THE WITNESS: As I stated before, I don't</p> <p>21 believe so, but again, it would be better to review</p> <p>22 the testimony.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. And fair to say, in the Reyes case,</p> <p>25 when you offered opinions in that case, your opinions</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. SWAMINATHAN: I haven't ordered it.</p> <p>2 MR. KIVETZ: Yeah. And I don't have it</p> <p>3 either, so...</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Yeah, but you're welcome to get a copy.</p> <p>6 Mr. Andreu, you understand you're able to get a copy of</p> <p>7 the transcript if you'd like one, correct?</p> <p>8 MR. KIVETZ: Through his counsel, but yes. Go</p> <p>9 ahead.</p> <p>10 THE WITNESS: Yes. Through the counsel.</p> <p>11 Correct.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Okay. And you have not requested it, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. At any point between the time of your</p> <p>16 testimony -- strike that. At any point between the time</p> <p>17 of your deposition testimony in the Reyes-Solache case</p> <p>18 and today, have you ever thought to yourself, boy, I</p> <p>19 said something during the course of that deposition that</p> <p>20 was not accurate or truthful?</p> <p>21 MR. KIVETZ: Objection. Form, foundation.</p> <p>22 THE WITNESS: I don't believe so, but again,</p> <p>23 without reviewing it, I -- I really can't answer</p> <p>24 for certain.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 13</p> <p>1 were based on the -- I mean, we testified about this in</p> <p>2 that case, but let me just ask you. In the Reyes case,</p> <p>3 that was the case involving Detective Guevara and other</p> <p>4 Area 5 Chicago Police detectives, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And in that case, you opined that there were</p> <p>7 no deviations from accepted police practices by any of</p> <p>8 the Chicago Police officers; is that fair?</p> <p>9 A. None that I would -- that I could see in the</p> <p>10 documents I reviewed, correct.</p> <p>11 Q. Okay. And that's also your opinion in this</p> <p>12 case, correct? That there were no deviations from</p> <p>13 police practices by Detective Guevara, or any of the</p> <p>14 other police officers involved in the Andujar</p> <p>15 investigation?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. In the Reyes case, fair to say your</p> <p>18 opinion was based on acceptance of the information</p> <p>19 contained in the police reports, correct?</p> <p>20 A. In all of the -- in all of the documents that</p> <p>21 I reviewed, yes. Including the --</p> <p>22 Q. In the Reyes case, you didn't offer any</p> <p>23 opinions that were based on accepting some of the</p> <p>24 testimony that was contained in the deposition</p> <p>25 transcripts, isn't that fair?</p>

<p style="text-align: right;">Page 14</p> <p>1 THE WITNESS: Say that again?</p> <p>2 MR. KIVETZ: Objection to form.</p> <p>3 THE WITNESS: I didn't understand.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. In the Reyes case, your opinions did not</p> <p>6 accept the testimony of Mr. Reyes and Mr. Solache, for</p> <p>7 example, correct?</p> <p>8 MR. KIVETZ: Objection. Form.</p> <p>9 THE WITNESS: I -- I still don't understand</p> <p>10 your question, sir.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. You understand, in the Reyes case, Mr. Reyes</p> <p>13 and Mr. Solache specifically testified that they were</p> <p>14 physically abused during the course of their</p> <p>15 interrogation; do you recall that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. And is it your opinion that that is</p> <p>18 consistent with the generally accepted police practices,</p> <p>19 to physically abuse suspects?</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: No, it's not.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Okay. So in that case, you did not accept</p> <p>24 that testimony as being true, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 alleging police abuse.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. In this case, in the Thomas Sierra case, you</p> <p>4 accepted the information contained in the police reports</p> <p>5 as true, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And for purposes of your opinions in</p> <p>8 this case, you're relying on the police reports as being</p> <p>9 accurate; is that fair?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: The police reports and other</p> <p>12 documents that I was presented and reviewed, yes.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. But you didn't credit all of the documents</p> <p>15 that you reviewed; is that fair?</p> <p>16 MS. BARBER: Objection. Form.</p> <p>17 MR. KIVETZ: Objection. Form, foundation.</p> <p>18 THE WITNESS: Yes, that is correct.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Okay. For example, you reviewed -- you</p> <p>21 received a transcript of the testimony of Hector</p> <p>22 Montanez, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And if Hector Montanez's testimony was true,</p> <p>25 do you believe that the police officers followed</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Go ahead.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Because if, in fact, you did credit</p> <p>6 their testimony, you would agree that would be a</p> <p>7 deviation from accepted police practices, correct?</p> <p>8 A. Police abuse, yes.</p> <p>9 Q. Okay. And in that case, you -- instead of</p> <p>10 crediting the testimony of Mr. Reyes and Mr. Solache,</p> <p>11 you credited the testimony -- strike that. In that --</p> <p>12 in the Reyes-Solache case, instead of crediting the</p> <p>13 testimony of Mr. Reyes and Mr. Solache, you credited the</p> <p>14 police report's descriptions of what happened during the</p> <p>15 course of those interrogations; is that fair?</p> <p>16 MS. BARBER: Objection. Form and foundation.</p> <p>17 THE WITNESS: Not just -- not just the police</p> <p>18 reports, but the totality of the documents that I</p> <p>19 reviewed.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. But not the testimony of Mr. Reyes and</p> <p>22 Mr. Solache?</p> <p>23 A. Not the parts --</p> <p>24 MR. KIVETZ: Objection. Form, foundation.</p> <p>25 THE WITNESS: Not the parts of their statement</p>	<p style="text-align: right;">Page 17</p> <p>1 generally accepted police practices?</p> <p>2 MR. KIVETZ: Objection. Form, foundation.</p> <p>3 THE WITNESS: So he recanted what he had</p> <p>4 originally said, but -- so I -- I believe the</p> <p>5 original statement that he gave to the ASA.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Okay. So you credited his original statement</p> <p>8 to the ASA, but not his deposition testimony; is that</p> <p>9 fair?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Okay. And so for purposes of your opinions,</p> <p>14 you accepted the police reports and handwritten</p> <p>15 statements that were contained in the police file, but</p> <p>16 not his deposition testimony; is that fair?</p> <p>17 A. Other -- other documents, including the police</p> <p>18 reports and his original statement, that is correct.</p> <p>19 Q. Okay. And -- but for purposes of your</p> <p>20 opinions, you did not credit his deposition testimony;</p> <p>21 is that fair?</p> <p>22 A. His recanting, yes, that is fair.</p> <p>23 Q. Okay. And did you credit, at all, the</p> <p>24 testimony of Jose Melendez?</p> <p>25 MR. KIVETZ: Objection. Form, foundation.</p>



<p style="text-align: right;">Page 18</p> <p>1 THE WITNESS: I credit his original statement</p> <p>2 that he gave to the state attorney. Yes.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Yeah. You're talking about as documented in</p> <p>5 the police reports?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Did you credit his --</p> <p>8 A. And --</p> <p>9 Q. -- did you credit his --</p> <p>10 A. And -- and --</p> <p>11 Q. -- I'm sorry, go ahead. Go ahead. Go ahead.</p> <p>12 A. And in his -- his written statement.</p> <p>13 Q. Did you credit his criminal trial testimony in</p> <p>14 offering your opinions in this case?</p> <p>15 MR. KIVETZ: Objection. Form.</p> <p>16 THE WITNESS: Who -- which one? Which person</p> <p>17 was that?</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Jose Melendez, the eyewitness who was in the</p> <p>20 vehicle with the victim.</p> <p>21 A. His recanting in the trial testimony, no.</p> <p>22 Q. You did not credit that in -- for purposes of</p> <p>23 your opinions, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And did you credit any of the testimony he's</p>	<p style="text-align: right;">Page 20</p> <p>1 Again, I -- I -- it -- my experience shows that --</p> <p>2 that there's -- when people recant, they -- they</p> <p>3 usually aren't being as truthful as they were when</p> <p>4 they gave their original statement.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Are you an expert on truthfulness?</p> <p>7 MR. KIVETZ: Objection. Form.</p> <p>8 THE WITNESS: No, not untruthfulness. I mean</p> <p>9 that, I guess, would require some type of a -- of a</p> <p>10 psychological training or degree, but my experience</p> <p>11 in -- in -- in dozens, if not hundreds, of cases</p> <p>12 has shown me to believe that the original</p> <p>13 statements are -- are the most accurate and most</p> <p>14 truthful.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. And you're relying on that experience</p> <p>17 and your conclusions based on that experience in</p> <p>18 offering your opinions in this case; is that fair?</p> <p>19 MR. KIVETZ: Objection. Form, foundation.</p> <p>20 THE WITNESS: Yes, sir.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Okay. Can you tell me, do you have a copy of</p> <p>23 your report in front of you, sir?</p> <p>24 A. I do.</p> <p>25 MR. SWAMINATHAN: Let's mark it as Exhibit 1.</p>
<p style="text-align: right;">Page 19</p> <p>1 given in any depositions since the criminal trial?</p> <p>2 MR. KIVETZ: Objection. Form, foundation.</p> <p>3 THE WITNESS: Not in which he recanted his</p> <p>4 original statement, no.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Why not?</p> <p>7 A. Because I am leery, and -- and in my</p> <p>8 experience -- that recantations can be made for a</p> <p>9 variety of reasons. And usually I have found that the</p> <p>10 original statement that's given close in time to the</p> <p>11 actual incident is the truthful one.</p> <p>12 Q. Okay. And so ultimately your opinions in this</p> <p>13 case are based on your credibility determinations; is</p> <p>14 that fair?</p> <p>15 MR. KIVETZ: Objection. Form, misstates his</p> <p>16 testimony.</p> <p>17 THE WITNESS: No, credibility is -- is up to</p> <p>18 the trier of facts. I'm just relaying what my</p> <p>19 experience has shown.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. But ultimately, your opinions are based on</p> <p>22 your assessment of credibility; is that fair?</p> <p>23 MR. KIVETZ: Objection. Form, foundation,</p> <p>24 misstates his testimony.</p> <p>25 THE WITNESS: No, sir. Not necessarily.</p>	<p style="text-align: right;">Page 21</p> <p>1 (EXHIBIT 1 MARKED FOR IDENTIFICATION)</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Can you show me where in your report you</p> <p>4 credit the testimony of Hector Montanez?</p> <p>5 MR. KIVETZ: Objection. Form.</p> <p>6 THE WITNESS: On Page 8, Point 29, when the</p> <p>7 detectives interviewed Montanez, he provided</p> <p>8 information that he was in the car when Sierra</p> <p>9 produced a gun, and fired shots at the victim, and</p> <p>10 -- and/or the victim's car.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. And where is -- where are you getting that</p> <p>13 information from? In -- so you identified Paragraph 29;</p> <p>14 is that right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And in Paragraph 29, where did you get</p> <p>17 that information from Paragraph 29 from?</p> <p>18 A. From the information that I reviewed,</p> <p>19 primarily the police supplementary reports.</p> <p>20 Q. Not primarily, entirely the police</p> <p>21 supplementary report, correct?</p> <p>22 MR. KIVETZ: Objection. Form.</p> <p>23 THE WITNESS: I can't say entirely, because I</p> <p>24 reviewed countless documents, but I would say</p> <p>25 primarily from the police reports.</p>



<p style="text-align: right;">Page 22</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Other than the police reports, is there any</p> <p>3 other documents that you're aware of that support the</p> <p>4 information contained in Paragraph 29?</p> <p>5 A. The statement of Mr. Montanez given to the</p> <p>6 State Attorney.</p> <p>7 Q. Thank you. Anything else?</p> <p>8 A. Not that I can recall offhand, but again, it</p> <p>9 was a totality of everything that I reviewed in this</p> <p>10 case.</p> <p>11 Q. Okay. And now, can you tell me where in your</p> <p>12 report you credit the deposition testimony of Hector</p> <p>13 Montanez?</p> <p>14 MR. KIVETZ: Objection. Form. You keep</p> <p>15 saying credit. This is an expert. He's not --</p> <p>16 he's looking at the total synopsis of everything.</p> <p>17 MR. SWAMINATHAN: You've made your objection,</p> <p>18 we've got it.</p> <p>19 MR. KIVETZ: He's not making any credibility</p> <p>20 determination.</p> <p>21 MR. SWAMINATHAN: We've noted your objection.</p> <p>22 You've made your objection.</p> <p>23 MR. KIVETZ: You know that full well. So I</p> <p>24 mean, I don't know why you're trying to confuse the</p> <p>25 issue by asking bad, awkward questions that are</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Yes. Can you show me where in your report you</p> <p>2 credit the deposition testimony of Hector Montanez?</p> <p>3 MR. KIVETZ: Objection. Form, misstates his</p> <p>4 previous testimony.</p> <p>5 MR. SWAMINATHAN: Thank you.</p> <p>6 MR. KIVETZ: Foundation.</p> <p>7 THE WITNESS: No, sir. I don't see anywhere</p> <p>8 where I discredited Montanez.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Is there anywhere where you credit</p> <p>11 Mr. Montanez's testimony?</p> <p>12 MR. KIVETZ: Objection. Form, foundation,</p> <p>13 misstates his previous testimony.</p> <p>14 THE WITNESS: On Page 11, Point 51, it says,</p> <p>15 "Montez [sic] identified Sierra as the shooter."</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Is that from his deposition testimony, or from</p> <p>18 the reports?</p> <p>19 MR. KIVETZ: Objection. Form, foundation.</p> <p>20 THE WITNESS: From the police reports, and --</p> <p>21 and -- and all the other information, not from his</p> <p>22 deposition.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. And is there any -- would you agree</p> <p>25 with me there's nowhere in your deposition -- strike</p>
<p style="text-align: right;">Page 23</p> <p>1 getting --</p> <p>2 MR. SWAMINATHAN: Objection to form. Objection</p> <p>3 to form. Let's just do objections to form.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Go ahead, Mr. Andreu.</p> <p>6 MR. KIVETZ: Objection to form. I just -- I'm</p> <p>7 going to follow the Federal Rules, but I wish that</p> <p>8 you would just ask a reasonable question, and not</p> <p>9 try to turn it and manipulate it in a way that's</p> <p>10 just making it confusing and ridiculous when you</p> <p>11 know full well no one here is making any --</p> <p>12 MR. SWAMINATHAN: No speaking objections.</p> <p>13 MR. KIVETZ: -- credibility --</p> <p>14 MR. SWAMINATHAN: Do Federal Rules allow</p> <p>15 speaking objections?</p> <p>16 MR. KIVETZ: -- nobody is making any type of</p> <p>17 credibility --</p> <p>18 MR. SWAMINATHAN: Where are the speaking</p> <p>19 objections allowed in the Federal Rules? Please</p> <p>20 stop.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Go ahead, Mr. Andreu.</p> <p>23 A. I'm going through my report.</p> <p>24 Q. Thank you.</p> <p>25 A. Could you ask -- repeat that question please?</p>	<p style="text-align: right;">Page 25</p> <p>1 that. Would you agree with me that there's nowhere in</p> <p>2 your report where you credit the deposition testimony of</p> <p>3 Hector Montanez?</p> <p>4 MR. KIVETZ: Objection. Form, foundation,</p> <p>5 misstates his report. I mean, it's in the</p> <p>6 materials reviewed.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. Go ahead.</p> <p>9 A. I -- I did not find that in my report.</p> <p>10 Q. Okay. And there's nowhere in your report</p> <p>11 where you accept the deposition testimony of Hector</p> <p>12 Montanez, and consider it in your opinions; is that</p> <p>13 fair?</p> <p>14 MR. KIVETZ: Objection. Form, foundation,</p> <p>15 misstates his report.</p> <p>16 THE WITNESS: I considered the totality of</p> <p>17 what I reviewed in -- in my opinions, to include</p> <p>18 deposition testimony of all the depositions that I</p> <p>19 -- that I was presented with in the documents in</p> <p>20 which I reviewed.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Hector Montanez testified at his deposition</p> <p>23 that he was threatened and subjected to promises; is</p> <p>24 that fair?</p> <p>25 MR. KIVETZ: Objection. Form.</p>

<p style="text-align: right;">Page 26</p> <p>1 THE WITNESS: Yes, sir. I read that.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. And would you agree that the</p> <p>4 interrogation techniques that were used on Mr. Montanez,</p> <p>5 as he described them, would deviate from generally</p> <p>6 accepted police practices?</p> <p>7 MR. KIVETZ: Objection. Form.</p> <p>8 THE WITNESS: As he described them, yes.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. And so in your report, you don't</p> <p>11 acknowledge that -- if the police officers deviated from</p> <p>12 generally accepted police practices, based on</p> <p>13 Mr. Montanez's testimony about what occurred; is that</p> <p>14 fair?</p> <p>15 MR. KIVETZ: Objection. Form, foundation,</p> <p>16 misstates his report. Go ahead.</p> <p>17 THE WITNESS: That is correct.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. And that's because you did not credit his</p> <p>20 deposition testimony about what occurred during the</p> <p>21 course of his interrogations, correct?</p> <p>22 MR. KIVETZ: Objection. Form, foundation,</p> <p>23 misstates the report.</p> <p>24 A. No, sir. Not -- not necessarily. Again, I --</p> <p>25 I believe that what individuals -- what the -- what all</p>	<p style="text-align: right;">Page 28</p> <p>1 Melendez about what occurred during the course of his --</p> <p>2 the identification procedures that he was involved in;</p> <p>3 is that fair?</p> <p>4 MR. KIVETZ: Objection. Form. I mean, this -</p> <p>5 - it -- these questions are ridiculous. Nobody is</p> <p>6 crediting anything or not, it's all up to the jury,</p> <p>7 you know full --</p> <p>8 MR. SWAMINATHAN: Stop making speaking</p> <p>9 objections.</p> <p>10 MR. KIVETZ: -- well about that. I mean,</p> <p>11 you're trying to confuse the witness. It --</p> <p>12 it's --</p> <p>13 MR. SWAMINATHAN: I'm not trying to confuse</p> <p>14 the witness.</p> <p>15 MR. KIVETZ: It's --</p> <p>16 MR. SWAMINATHAN: Mr. Andreu is a --</p> <p>17 MR. KIVETZ: Police officer.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. How long have you been in -- how long have you</p> <p>20 been -- were you a police officer, Mr. Andreu?</p> <p>21 A. 40 years.</p> <p>22 Q. Am I confusing you?</p> <p>23 A. Some of your questions are strange, yes.</p> <p>24 Q. Yeah. Tell me what's confusing for you.</p> <p>25 A. Well, because I've said several times that my</p>
<p style="text-align: right;">Page 27</p> <p>1 the individuals said in their written statements to the</p> <p>2 State Attorney, close at hand to when the incident</p> <p>3 occurred, are more credible, and there are reasons for,</p> <p>4 later on, individuals recanting or changing their</p> <p>5 testimony, based on --</p> <p>6 Q. Okay.</p> <p>7 A. -- experience.</p> <p>8 Q. Okay. And so part of your opinion ultimately</p> <p>9 is that the statements given to police officers were</p> <p>10 more credible than later statements given at deposition;</p> <p>11 is that fair?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 THE WITNESS: My experience leads me to</p> <p>14 believe they'll get that, yes.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. And that experience that you've just</p> <p>17 described, ultimately, is something you relied on for</p> <p>18 purposes of offering your opinions in this case; is that</p> <p>19 fair?</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: My experience, training, and</p> <p>22 education. Yes, sir.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. And would it be fair to say that, in</p> <p>25 your report, you do not credit the testimony of Jose</p>	<p style="text-align: right;">Page 29</p> <p>1 experience is that the initial statements are more</p> <p>2 reliable and more truthful. And you keep asking me</p> <p>3 individuals the same question [sic].</p> <p>4 Q. So are there words that I've used during this</p> <p>5 deposition that you don't understand?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. Thank you. Mr. Andreu, let me ask the</p> <p>8 question again, and Mr. Kivetz can make an objection, a</p> <p>9 non-speaking objection, an objection to form, if he'd</p> <p>10 like. Would you agree with me that, in your report,</p> <p>11 there is nowhere where you credit the deposition</p> <p>12 testimony or criminal trial testimony of Jose Melendez?</p> <p>13 MR. KIVETZ: Objection. Form, misstates his</p> <p>14 report.</p> <p>15 THE WITNESS: Specifically in the report, no.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Okay. Because ultimately you agree that, if</p> <p>18 you credit the criminal trial testimony and deposition</p> <p>19 testimony of Jose Melendez, that would be a deviation</p> <p>20 from generally accepted police practices, correct?</p> <p>21 MR. KIVETZ: Objection. Form.</p> <p>22 THE WITNESS: The allegations of police</p> <p>23 misconduct and abuse that were made later on, I</p> <p>24 believe, if those occurred, were -- were not proper</p> <p>25 police procedures. I agree. But again, you have</p>

<p style="text-align: right;">Page 30</p> <p>1 to go back to my opinions that the first statement</p> <p>2 given to the ASA were [sic] the most accurate and</p> <p>3 most truthful.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Mr. Melendez says that things occurred before</p> <p>6 he gave the statement to the ASA; is that fair?</p> <p>7 MR. KIVETZ: Objection. Form, foundation.</p> <p>8 THE WITNESS: That -- say that again.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Mr. Melendez testified that the police</p> <p>11 officers did things during the course of the</p> <p>12 identification procedures and their interviews of him</p> <p>13 before he ever met with the ASA, correct?</p> <p>14 MR. KIVETZ: Objection. Form, foundation.</p> <p>15 Which testimony are you referring to?</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Go ahead.</p> <p>18 A. I -- I -- I don't understand that question,</p> <p>19 sir.</p> <p>20 Q. Yeah. You reviewed the deposition testimony</p> <p>21 and criminal trial testimony of Mr. Melendez, Correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And in the -- in both of those</p> <p>24 testimonies, Mr. Melendez indicated that, during the</p> <p>25 course of his interviews with police officers, before he</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. So in the police reports, in the statements to</p> <p>2 the State's Attorney?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What about in his deposition testimony, or</p> <p>5 criminal trial testimony?</p> <p>6 A. Again, I would have to actually see what point</p> <p>7 you're talking about in those testimonies. I reviewed</p> <p>8 thousands of pages of documents, and I really can't</p> <p>9 remember every one.</p> <p>10 Q. In the deposition testimony and criminal trial</p> <p>11 testimony of Mr. Melendez, he says that he was</p> <p>12 specifically told which photo to select, fair?</p> <p>13 MR. KIVETZ: Objection. Form, foundation.</p> <p>14 Misstates his testimony.</p> <p>15 THE WITNESS: Again, I would like to be able</p> <p>16 to review that part of his testimony before --</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. You don't remember that piece of testimony</p> <p>19 from Mr. Melendez? It's kind of a big deal in this</p> <p>20 case, yeah?</p> <p>21 MR. KIVETZ: Objection. Form. He can --</p> <p>22 stop. He just asked you if -- for a specific cite</p> <p>23 to show whatever support you think you're coming up</p> <p>24 with here. He asked you specifically, you're</p> <p>25 refusing to do it. And now you're basically</p>
<p style="text-align: right;">Page 31</p> <p>1 met with the ASA, he informed them that he didn't get a</p> <p>2 view of the shooter's face, correct?</p> <p>3 MR. KIVETZ: Objection. Form, foundation.</p> <p>4 THE WITNESS: Specifically having seen that, I</p> <p>5 -- I don't recall. If you could bring up that</p> <p>6 testimony or something, and allow me to review it,</p> <p>7 I would be able to answer your question, but...</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. In offering your opinion -- oh, sorry. Go</p> <p>10 ahead. Go ahead. In offering your opinions in this</p> <p>11 case, did you consider any testimony that indicated that</p> <p>12 Mr. Melendez was not able to make an identification of</p> <p>13 the shooters?</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: No, sir.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Okay.</p> <p>18 A. The statement that he gave through --</p> <p>19 indicated to me otherwise.</p> <p>20 Q. What indicated otherwise?</p> <p>21 A. That he was able to make an identification.</p> <p>22 Q. What indicated other -- what indicated that he</p> <p>23 was able to make an identification?</p> <p>24 A. It's -- he -- he made the identification in</p> <p>25 his statement to the State Attorney.</p>	<p style="text-align: right;">Page 33</p> <p>1 harassing him by claiming, "You don't remember?" I</p> <p>2 mean, come on. It -- this happens all the time in</p> <p>3 these depositions --</p> <p>4 MR. SWAMINATHAN: Your objection --</p> <p>5 MR. KIVETZ: It happens to me almost every deposition</p> <p>6 that I take with you. Somebody says they don't</p> <p>7 remember. They ask you to point out the specific</p> <p>8 piece of evidence, which they're entitled to do.</p> <p>9 You're refusing to do it.</p> <p>10 MR. SWAMINATHAN: I am refusing to do it.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Mr. Andreu, let the record reflect I'm</p> <p>13 refusing to do it. So let's be really clear. Is it</p> <p>14 your -- is it the case that, in this case -- did you</p> <p>15 spend time preparing for this deposition at all?</p> <p>16 A. Yes, sir.</p> <p>17 Q. How much time did you spend preparing for this</p> <p>18 deposition?</p> <p>19 A. Maybe ten hours.</p> <p>20 Q. Okay. And did you review your report and the</p> <p>21 various materials that you'd reviewed in writing your</p> <p>22 report?</p> <p>23 A. Not all of the material. That wouldn't be</p> <p>24 possible in ten hours.</p> <p>25 Q. Okay. But you reviewed a lot of it, fair?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Some -- most of it -- or some of it, I should</p> <p>2 say, not even most of it.</p> <p>3 Q. And what did you review? Did you review all</p> <p>4 the police reports?</p> <p>5 A. I reviewed the police reports.</p> <p>6 Q. Okay. Did you review all the depositions?</p> <p>7 A. No, not all of the depositions.</p> <p>8 Q. Did you review any of the depositions in</p> <p>9 preparation for this deposition?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Which depositions did you review?</p> <p>12 A. I can't remember at this point, but I reviewed</p> <p>13 depositions. I reviewed Mr. Tiderington's report.</p> <p>14 Q. Can you tell me any depositions that you</p> <p>15 recall reviewing in preparation for today's deposition?</p> <p>16 A. No, sir.</p> <p>17 MS. BARBER: I'm sorry. Can -- I didn't hear</p> <p>18 that question? Can you say that again?</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Can you tell me any depositions that you</p> <p>21 recall reviewing in preparation for this deposition?</p> <p>22 A. Not by specific names right now, sir. No, I</p> <p>23 can't specifically tell you, but I did review</p> <p>24 depositions.</p> <p>25 Q. Okay. And as you sit here today, is it your</p>	<p style="text-align: right;">Page 36</p> <p>1 testimony on it? His criminal trial or his</p> <p>2 deposition?</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Any of it. Go ahead.</p> <p>5 A. I do -- I do remember his trial testimony and</p> <p>6 his deposition. I'm not -- I just don't remember</p> <p>7 specifically the question you're asking me. That's why</p> <p>8 I would like to -- to view that portion.</p> <p>9 Q. Focus on my question. Do you remember -- you</p> <p>10 said you do remember that -- his criminal trial</p> <p>11 testimony and his deposition. What do you remember</p> <p>12 about it?</p> <p>13 A. Sir, the -- the trial testimony and the</p> <p>14 depositions were hours long. I -- I can't tell you</p> <p>15 specifically what I remember and I don't remember.</p> <p>16 Q. So what do you remember generally about it?</p> <p>17 A. What -- that he recanted his -- his initial</p> <p>18 statement. That's the gist of what -- what I can</p> <p>19 remember.</p> <p>20 Q. Yeah. And what does he -- do you remember</p> <p>21 anything about what he says about how he came to</p> <p>22 identify Thomas Sierra?</p> <p>23 MR. KIVETZ: Objection to form.</p> <p>24 THE WITNESS: Sir, I -- I -- in order to give</p> <p>25 an accurate answer to that question, I would like</p>
<p style="text-align: right;">Page 35</p> <p>1 testimony that you have no idea whether Jose Melendez</p> <p>2 testified that he was told by the police officers which</p> <p>3 photo to select?</p> <p>4 MR. KIVETZ: No. Objection. Form. Misstates</p> <p>5 his testimony. He asked you to provide the</p> <p>6 specific sentence that you're asking about in</p> <p>7 regards to the -- either the deposition or the</p> <p>8 criminal trial testimony, you're refusing to</p> <p>9 provide it.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Go ahead.</p> <p>12 A. No, sir. No, sir. I'm not saying that. What</p> <p>13 I'm saying is that I may have reviewed it. I may have</p> <p>14 seen it, but I would like to be able to read that</p> <p>15 portion where he says that, either deposition or trial</p> <p>16 testimony, if that would be possible.</p> <p>17 Q. No. I'm just asking you a simple question.</p> <p>18 Sitting here today, do you have any idea what Jose</p> <p>19 Melendez said occurred during the course of the photo</p> <p>20 array identification procedure, in his testimony?</p> <p>21 A. Say that question again, please?</p> <p>22 Q. Yeah. Sitting here today, do you have any</p> <p>23 idea what Jose Melendez testified had occurred during</p> <p>24 the course of the photo array identification procedure?</p> <p>25 MR. KIVETZ: Objection. Form. And which</p>	<p style="text-align: right;">Page 37</p> <p>1 to view that portion of his testimonies.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Do you have any understanding, sitting here</p> <p>4 today at this deposition in the Thomas Sierra case,</p> <p>5 whether or not Jose Melendez testified that he was told</p> <p>6 which photo to select? Any idea?</p> <p>7 A. That may --</p> <p>8 MR. KIVETZ: Objection. Form, foundation.</p> <p>9 THE WITNESS: That may be in the -- in -- in</p> <p>10 the documents that I reviewed. I'm not saying</p> <p>11 definitively that it's not there, but again, I</p> <p>12 would like to review those documents before -- and</p> <p>13 so that I will be guessing at your answer.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. If Mr. Melendez testified that he was told</p> <p>16 which photo to select from the photo array, would you</p> <p>17 agree with me that would be a deviation from generally</p> <p>18 accepted police practices?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And if Jose Melendez was given any</p> <p>21 indication about which photo to select from the photo</p> <p>22 array, do you agree that would deviate from generally</p> <p>23 accepted police practices?</p> <p>24 MR. KIVETZ: Objection. Form. Hold on.</p> <p>25 Objection. Form, foundation, speculative,</p>

<p style="text-align: right;">Page 38</p> <p>1 incomplete hypothetical.</p> <p>2 THE WITNESS: Yes, sir.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And you don't include, anywhere in your</p> <p>5 report, the opinion that, if Jose Melendez was given any</p> <p>6 indication of which photo to select from the photo</p> <p>7 array, that that would deviate from generally accepted</p> <p>8 police practices, correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Why not?</p> <p>11 A. Because I don't believe that those took --</p> <p>12 took place. I think that the -- the changes in</p> <p>13 testimony that happened subsequent to their initial</p> <p>14 statements to the State Attorney occurred for reasons</p> <p>15 that I don't know, but I -- I -- I stand by my</p> <p>16 statements that their initial statements are, in my</p> <p>17 opinion, the most reliable.</p> <p>18 Q. Okay. Because ultimately you -- for purposes</p> <p>19 of your opinions, you accepted what's contained in the</p> <p>20 police reports and handwritten statements about what</p> <p>21 Mr. Melendez experienced rather than his testimony; is</p> <p>22 that fair?</p> <p>23 MR. KIVETZ: Objection to form.</p> <p>24 THE WITNESS: I considered everything, but</p> <p>25 yes, primarily the -- the original statements and</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And in your opinions, from Page 9 to</p> <p>3 the end of the report, Page 19, can you please identify</p> <p>4 for me anywhere in your report where you credited</p> <p>5 testimony from any witnesses?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 MS. BARBER: Objection. Form.</p> <p>8 THE WITNESS: Page 10, I explain what Melendez</p> <p>9 told the police officers.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Is that from testimony, or is that from police</p> <p>12 reports?</p> <p>13 A. That's from police reports, I believe --</p> <p>14 Q. Okay.</p> <p>15 A. -- at -- at that point in -- in my report.</p> <p>16 Q. Okay. So tell me where -- let me ask the</p> <p>17 question again. Just focus on what I'm asking you</p> <p>18 about. I'm not asking you about police reports. I'm</p> <p>19 asking you about testimony, okay?</p> <p>20 A. Okay.</p> <p>21 Q. So let me -- let me ask you --</p> <p>22 MR. KIVETZ: Deposition testimony --</p> <p>23 deposition testimony, recant testimony, criminal</p> <p>24 trial testimony? What testimony are you asking</p> <p>25 him?</p>
<p style="text-align: right;">Page 39</p> <p>1 the police reports.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. And did you review the deposition of</p> <p>4 Lucy Montalvo?</p> <p>5 A. Yes.</p> <p>6 Q. And where in your report do you credit the</p> <p>7 deposition testimony of Lucy Montalvo, if at all?</p> <p>8 A. I don't believe that -- that I mentioned her</p> <p>9 deposition in my report.</p> <p>10 Q. Why not?</p> <p>11 A. Because again, I relied on her initial</p> <p>12 statement and the police reports.</p> <p>13 Q. Okay. Take a look at Page 5 of your report?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Beginning on Page 5 of your report, you begin</p> <p>16 to discuss the Andujar homicide investigation and the</p> <p>17 related -- and the Gonzalez murder investigation,</p> <p>18 correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And let's go to Page 9; is that where</p> <p>21 your opinions begin?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And so from Page 9 to Page 19 of your</p> <p>24 expert report, that is the section that contains your</p> <p>25 opinions in this case, correct?</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. SWAMINATHAN: I'm asking you about</p> <p>2 testimony of any kind.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. You understand, sir, when I say the word</p> <p>5 "testimony," testimony is anything that's a sworn</p> <p>6 statement under oath, like a criminal trial testimony or</p> <p>7 deposition transcript, fair, Mr. Andreu?</p> <p>8 A. Okay. If that's what you're referring to.</p> <p>9 Q. Yeah. Okay. You understand what the word</p> <p>10 testimony means, correct?</p> <p>11 A. Yeah, but testimony can be verbal, as well. If</p> <p>12 a person says something that to the detectives, they're</p> <p>13 testifying to what they saw --</p> <p>14 Q. Okay.</p> <p>15 A. -- it may not -- that may not be under oath,</p> <p>16 but that is verbal testimony.</p> <p>17 Q. Okay. Thank you. Let's make that -- that's a</p> <p>18 valuable clarification. Thank you. When I refer to</p> <p>19 testimony, I'm talking about any statements given by</p> <p>20 witnesses under oath, either in a criminal -- in a</p> <p>21 criminal trial proceeding, deposition testimony, do you</p> <p>22 understand that?</p> <p>23 A. Okay.</p> <p>24 Q. Okay. As compared to statements given to</p> <p>25 police officers, unsworn. Do you understand that?</p>



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1 A. Yes, sir.

2 Q. For example, you understand, when you give  
3 testimony under oath at a criminal trial, which you've  
4 done many, many times, that's different than simply  
5 something you might say in conversation with somebody;  
6 is that fair?

7 A. Correct.

8 Q. You understand the importance of giving -- of  
9 a statement being sworn?

10 A. Yes.

11 MR. KIVETZ: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. SWAMINATHAN:

14 Q. You understand the difference between unsworn  
15 and sworn statements, correct?

16 A. Yes.

17 Q. And you understand the seriousness of sworn  
18 statements, correct?

19 A. Yes.

20 Q. Okay. And you understand that depositions are  
21 sworn testimony, correct?

22 A. Yes.

23 Q. And you understand that criminal trial  
24 testimony is sworn testimony, correct?

25 A. Yes.

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1 Q. Okay. And you understand that when someone  
2 speaks to a police officer, that is unsworn statements,  
3 correct?

4 A. Not necessarily. They -- those statements  
5 could be given under oath, as well.

6 Q. Okay. Are there any statements given under  
7 oath in the police reports in this case?

8 A. To the State Attorney --

9 MR. KIVETZ: Objection. Form.

10 THE WITNESS: I -- I would assume that the  
11 statements given to the State Attorney were under  
12 oath.

13 BY MR. SWAMINATHAN:

14 Q. Were they?

15 A. I believe they were.

16 Q. For purposes of your opinions, is it your  
17 understanding that the statements given to the State's  
18 Attorney were under oath?

19 MR. KIVETZ: Objection. Form. Foundation.

20 THE WITNESS: I believe they were. I can't be  
21 100 percent certain because I wasn't there and  
22 didn't know if they were sworn in, but I would  
23 assume that a formal statement taken by an  
24 Assistant State Attorney would be formal.

25 BY MR. SWAMINATHAN:

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1 Q. And when you were working in Miami, did you  
2 take sworn statements from witnesses?

3 A. Yes, sir.

4 Q. And when you were working in Miami, when you  
5 took sworn statements from witnesses, how was that done?

6 A. I would swear the witness in, or the court  
7 reporter would swear the witness in, or -- or one of the  
8 other supervisors or detectives.

9 Q. And then what would happen?

10 A. Then we would take a statement.

11 Q. And how would that be -- how would the  
12 statement be taken: Was it done by video, by audio, in  
13 writing? How was that done?

14 A. We did not have video when I was in Miami. It  
15 was either stenographically reported -- we had in-house  
16 stenographers that we could use. Or they would be tape  
17 recorded, or they could be handwritten. Either of the  
18 one, but no video at that time.

19 Q. In 1995 in Miami, were you using audio  
20 recordings to take statements from witnesses?

21 A. We had the ability to do so, and -- and they  
22 were taken at times, yes.

23 Q. Okay. And in 1995 in Miami, when you took  
24 audio-recorded statements, it's your testimony that you  
25 would take them as sworn statements. You'd swear the

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1 witness in and then take the statement; is that fair?

2 A. Yes, sir.

3 Q. Okay. And in -- and when you took written  
4 statements from witnesses in Miami, would you write the  
5 statements out or would the witness write their  
6 statements?

7 A. I would write the statement out.

8 Q. Would you ever have the witnesses write their  
9 own statements?

10 A. I can't remember a time when I did, but I -- I  
11 can't say never.

12 Q. When you took statements from witnesses in  
13 Miami, would you document what the witnesses told you?

14 A. It would be documented either by the  
15 stenographer, or the tape recorder, or in the -- in my  
16 written statement.

17 Q. And when you met -- when you spoke to  
18 witnesses in Miami, would it be the case that sometimes  
19 witnesses' stories would change over time?

20 A. Yes.

21 Q. And would you document all of the different  
22 changes to a witness's statement or just the portion  
23 that you liked?

24 A. What do you mean by the portion that I liked?

25 Q. Well, let me ask it this way. Would you -- if

<p style="text-align: right;">Page 46</p> <p>1 -- when -- as witnesses' stories shifted during the</p> <p>2 course of your interviews of a witness, would you</p> <p>3 document all of the different things that the witness</p> <p>4 told you or just some of what they told you?</p> <p>5 MR. KIVETZ: Objection. Form. Foundation.</p> <p>6 Speculative. Incomplete hypothetical.</p> <p>7 THE WITNESS: Yes. If a witness gave me a</p> <p>8 sworn statement, that would be my last contact with</p> <p>9 that witness, as far as questioning is concerned.</p> <p>10 Unless, later on, maybe there was a -- a -- a live</p> <p>11 lineup or something like that. But the -- the</p> <p>12 sworn statement that was given, however it was</p> <p>13 reported or documented, would end my conversation</p> <p>14 with that witness.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. And if, before the sworn statement, the</p> <p>17 witness gave you different information than what's</p> <p>18 contained in the sworn statement, would you document</p> <p>19 that anywhere?</p> <p>20 MR. KIVETZ: Objection. Form. Foundation.</p> <p>21 Speculative. Incomplete hypothetical.</p> <p>22 THE WITNESS: No. No, sir. Not necessarily,</p> <p>23 because I would -- if -- if -- if I knew that what</p> <p>24 the person was telling me, initially, had happened</p> <p>25 at 10:00 at night, when I knew that it happened at</p>	<p style="text-align: right;">Page 48</p> <p>1 those; is that fair?</p> <p>2 MR. KIVETZ: Objection. Form.</p> <p>3 THE WITNESS: No, sir. I don't think I would</p> <p>4 document that.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Okay. And for example, if a witness -- strike</p> <p>7 that. If a suspect denied involvement in a crime ten</p> <p>8 times, before, then, admitting to the crime, you</p> <p>9 wouldn't document the first ten times that they denied</p> <p>10 involvement; is that fair?</p> <p>11 MR. KIVETZ: Objection. Form. Foundation.</p> <p>12 Speculative. Incomplete hypothetical.</p> <p>13 THE WITNESS: Again, in -- and every case is</p> <p>14 different, and it depends on -- on the individual</p> <p>15 case, but I would -- it -- it goes without saying,</p> <p>16 as a homicide investigator, that when you go to</p> <p>17 interview an offender, he or she is going to</p> <p>18 initially deny that.</p> <p>19 I -- I cannot recall a case when I sat down,</p> <p>20 advised an individual suspect of his or her rights,</p> <p>21 and the individual says, yeah, I did it, you're</p> <p>22 right. I just can't recall. I mean, maybe in a</p> <p>23 husband-and-wife situation where something</p> <p>24 happened, but they're -- 99 percent of the time,</p> <p>25 the individual is going to deny involvement. I --</p>
<p style="text-align: right;">Page 47</p> <p>1 10:00 in the morning, I would continue interviewing</p> <p>2 that individual and find out why that discrepancy,</p> <p>3 so -- until I got to the final statement. And if</p> <p>4 the individual kept saying it was 10:00 in the</p> <p>5 morning, then so be it. That was -- that would be</p> <p>6 what was recorded, ultimately, in his or her</p> <p>7 statement.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. Okay. So in other words, if witnesses gave</p> <p>10 you information that was inconsistent with your</p> <p>11 understanding of the crime, you may not document some of</p> <p>12 that information, correct?</p> <p>13 MR. KIVETZ: Objection. Form. Misstates his</p> <p>14 testimony.</p> <p>15 THE WITNESS: That is correct. Until the --</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. And so you would -- go ahead. I'm sorry. Go</p> <p>18 ahead.</p> <p>19 A. Until the -- the final statement, when I -- I</p> <p>20 believed or realized that that was what the person's</p> <p>21 statement was going to be, and then it would be</p> <p>22 memorialized in one way or another, then that -- that</p> <p>23 was his or her statement.</p> <p>24 Q. Okay. And any prior statements that they'd</p> <p>25 given that were contrary to that, you wouldn't document</p>	<p style="text-align: right;">Page 49</p> <p>1 I don't feel the -- the need to document his or her</p> <p>2 denials.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And it's -- and your practice, in your</p> <p>5 opinion, that there's not a need to document a suspect's</p> <p>6 series of denials before a subsequent admission, is</p> <p>7 consistent with generally accepted police practices?</p> <p>8 MR. KIVETZ: Objection. Form. Foundation.</p> <p>9 Speculative. Incomplete hypothetical.</p> <p>10 THE WITNESS: In my opinion, yes. I -- I know</p> <p>11 that later on, in deposition or trial testimony, if</p> <p>12 I am asked, did Mr. Smith deny shooting Mrs. Smith?</p> <p>13 I would say yes, of course, the denial -- he denied</p> <p>14 it for three hours during our interview, until he</p> <p>15 finally admitted what -- his participation and</p> <p>16 whatever he did. I mean, I wouldn't -- I would not</p> <p>17 hide his denials. Absolutely not.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Well, you wouldn't include them in your police</p> <p>20 reports, though, under generally accepted police</p> <p>21 practices, correct?</p> <p>22 A. I --</p> <p>23 MR. KIVETZ: Objection. Form. Foundation.</p> <p>24 Speculative. Incomplete hypothetical.</p> <p>25 THE WITNESS: I can't say that I would never</p>



<p style="text-align: right;">Page 50</p> <p>1 include that in -- in my police report. Again,</p> <p>2 every case is different. Every situation is</p> <p>3 different. So I can't give you a definitive</p> <p>4 answer, that I would or would not, sir.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Under generally accepted police practices, it</p> <p>7 is permissible to document a final admission or</p> <p>8 confession, but not document earlier denials; is that</p> <p>9 fair?</p> <p>10 MR. KIVETZ: Objection. Form. Foundation.</p> <p>11 Speculative. Incomplete hypothetical.</p> <p>12 THE WITNESS: No. You -- you used the word</p> <p>13 that -- that it's -- it's -- not permissible. It's</p> <p>14 -- again, is it a requirement, 100 percent, that it</p> <p>15 be done? No. Is it prohibited that it be done?</p> <p>16 No. So again, every situation, every case is -- is</p> <p>17 different, so I -- I can't answer that question</p> <p>18 definitively.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. What are the kinds of circumstances in which</p> <p>21 you should, under generally accepted police practices,</p> <p>22 document a witness's denials before a subsequent</p> <p>23 admission?</p> <p>24 MR. KIVETZ: Objection. Form. Foundation.</p> <p>25 Speculative. Incomplete hypothetical.</p>	<p style="text-align: right;">Page 52</p> <p>1 acceptable not to document earlier denials before a</p> <p>2 subsequent admission?</p> <p>3 A. It -- the same as my previous --</p> <p>4 MR. KIVETZ: Form. Foundation. Speculative.</p> <p>5 Incomplete hypothetical.</p> <p>6 THE WITNESS: The same as -- as my previous</p> <p>7 answer. Without knowing the specifics of the case,</p> <p>8 I cannot answer that question.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. And if I understand your testimony correctly,</p> <p>11 it was your experience that individuals who are</p> <p>12 suspected or -- in crimes don't just immediately admit</p> <p>13 to it; is that what you said?</p> <p>14 A. The overwhelming majority of the time, yes.</p> <p>15 That's correct.</p> <p>16 Q. In other words, people typically deny</p> <p>17 involvement before ever making any kind of admission; is</p> <p>18 that fair?</p> <p>19 MR. KIVETZ: Objection. Form. Foundation.</p> <p>20 Speculative. Incomplete hypothetical.</p> <p>21 THE WITNESS: Again, the overwhelmingly --</p> <p>22 overwhelmingly, they do that. Yes.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. And based on your practices, as you've</p> <p>25 described them, it would often be the case that, if one</p>
<p style="text-align: right;">Page 51</p> <p>1 THE WITNESS: Again, you're asking me to -- to</p> <p>2 -- to provide you with a specific answer on when it</p> <p>3 would be or when it would not be. And without</p> <p>4 knowing details of the -- of the -- of the case, or</p> <p>5 the -- the incident, I can't answer that question,</p> <p>6 sir.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. I'm not asking you for any specifics. I'm</p> <p>9 asking you to give me any kind of circumstance in which</p> <p>10 you should, under generally accepted police practices,</p> <p>11 document a suspect's denials before a subsequent</p> <p>12 admission?</p> <p>13 MR. KIVETZ: Objection --</p> <p>14 MS. BARBER: That's not your previous</p> <p>15 question.</p> <p>16 MR. SWAMINATHAN: Go ahead.</p> <p>17 MR. KIVETZ: Objection. Form. Foundation.</p> <p>18 Speculative. Incomplete hypothetical.</p> <p>19 THE WITNESS: I -- I -- I can't -- I can't</p> <p>20 give you a -- a -- a -- a specific time when it</p> <p>21 would be acceptable without knowing the</p> <p>22 circumstances of the case.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Can you tell me any circumstances, under</p> <p>25 generally accepted police practices, when it would be</p>	<p style="text-align: right;">Page 53</p> <p>1 were to look at Mr. Andreu's police reports from his</p> <p>2 investigations in Miami, one wouldn't necessarily get</p> <p>3 the full story of what happened during the investigation</p> <p>4 from your police reports, fair?</p> <p>5 MR. KIVETZ: Objection. Form. Foundation.</p> <p>6 Speculative. Incomplete hypothetical.</p> <p>7 THE WITNESS: No, sir. That's not necessarily</p> <p>8 true. My report may include that the individual</p> <p>9 denied it for four hours, but if -- if, in my</p> <p>10 report -- let me give you an example. My report, I</p> <p>11 -- I start talking to an individual at 9:00 in the</p> <p>12 morning, and my statement is taken at 5:00</p> <p>13 afternoon -- in the afternoon, it goes without</p> <p>14 saying that for those -- that period of time, he</p> <p>15 was in denial, or he was providing denials.</p> <p>16 (Coughs.) Excuse me.</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. And it goes without saying that that person</p> <p>19 was probably interviewed multiple times during the</p> <p>20 course of those, you know, eight, nine hours; is that</p> <p>21 fair, too?</p> <p>22 A. It could be --</p> <p>23 MR. KIVETZ: Objection. Form. Hold on a</p> <p>24 second, everybody. Let's just slow down with this</p> <p>25 incredible hypothetical scenario here. Objection.</p>

<p style="text-align: right;">Page 54</p> <p>1 Form. Foundation. Speculative. Incomplete</p> <p>2 hypothetical.</p> <p>3 THE WITNESS: Say that question again, please?</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Yeah. And in your example, you know, you've</p> <p>6 got somebody in custody for eight to nine hours who's</p> <p>7 your suspect. You said, we can safely assume that if</p> <p>8 I've got that person in custody for eight to nine hours</p> <p>9 before I got an admission, that they'd been denying up</p> <p>10 to that point, correct?</p> <p>11 MR. KIVETZ: Objection. Form. Foundation.</p> <p>12 Speculative. Incomplete hypothetical.</p> <p>13 THE WITNESS: That would make sense, that they</p> <p>14 -- those -- that period of time, they were denying.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. And during that period of time, we can safely</p> <p>17 assume that you were questioning the witness and had</p> <p>18 gone into the room multiple times, but you're not</p> <p>19 necessarily documenting every instance that you went</p> <p>20 into the room; is that fair?</p> <p>21 A. It --</p> <p>22 MR. KIVETZ: Objection. Form. Foundation.</p> <p>23 Speculative. Incomplete hypothetical.</p> <p>24 THE WITNESS: It -- it could have been just</p> <p>25 one continuous interview, or it could be several</p>	<p style="text-align: right;">Page 56</p> <p>1 leave it up to you. All right.</p> <p>2 THE WITNESS: Okay. Let me get ten minutes.</p> <p>3 THE REPORTER: All right. We are off the</p> <p>4 record. The time is 10:56 Central.</p> <p>5 (OFF THE RECORD)</p> <p>6 THE REPORTER: We are back on the record for</p> <p>7 the deposition of Nelson Andreu being conducted by</p> <p>8 videoconference. My name is Sydney Little. Today</p> <p>9 is May 12th, 2023, and the time is 11:08 a.m.</p> <p>10 Central.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Mr. Andreu, have you ever been involved in</p> <p>13 investigating allegations of wrongdoing by police</p> <p>14 officers?</p> <p>15 A. No, sir. I cannot remember any case where I -</p> <p>16 - I did any investigation like that.</p> <p>17 Q. Okay. And during the course of your -- not</p> <p>18 your expert career, but your law enforcement career, did</p> <p>19 you ever have instances when you would investigate</p> <p>20 officers to determine whether they should be disciplined</p> <p>21 in any way?</p> <p>22 A. Yes. And -- and I should back up and say,</p> <p>23 when I was the captain and the chief in West Miami,</p> <p>24 there -- there were some investigations that -- that I</p> <p>25 did involving police officers. I was --</p>
<p style="text-align: right;">Page 55</p> <p>1 different interviews. They may have asked to go to</p> <p>2 the restroom or something like that. There --</p> <p>3 there is no way to -- to specify that. (Coughs.)</p> <p>4 Excuse me.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. And in your conception of generally accepted</p> <p>7 police practices, it would be acceptable to go into the</p> <p>8 room multiple times and interrogate the same suspect,</p> <p>9 fair?</p> <p>10 MR. KIVETZ: Objection. Form. Foundation.</p> <p>11 Speculative. Incomplete hypothetical.</p> <p>12 THE WITNESS: Yes, sir.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. And, in fact, it was common when somebody</p> <p>15 denied involvement, to leave and then come back and</p> <p>16 question them again, correct?</p> <p>17 MR. KIVETZ: Objection. Form. Foundation.</p> <p>18 Speculative. Incomplete hypothetical. Do you need</p> <p>19 a break to get some water, Mr. Nelson?</p> <p>20 THE WITNESS: I do. Not -- not for water, but</p> <p>21 I've been battling this -- these cough attacks for</p> <p>22 a while. If we could take a break, I would</p> <p>23 appreciate --</p> <p>24 MR. SWAMINATHAN: Yeah. Why don't we take a</p> <p>25 five-minute break? If you need ten minutes, we'll</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Were those in -- I'm sorry. Go ahead.</p> <p>2 A. I was thinking of the City of Miami. But in</p> <p>3 West Miami, since I was part of the administration, I</p> <p>4 did participate in that.</p> <p>5 Q. And how long were you in West Miami?</p> <p>6 A. I believe 15 years.</p> <p>7 Q. And were you -- did you work in Internal</p> <p>8 Affairs or any other sort of department responsible for</p> <p>9 discipline of police officers?</p> <p>10 A. It was -- it was not technically called</p> <p>11 Internal Affairs, but the chief at the time, when I was</p> <p>12 the second in command, would assign me to investigate</p> <p>13 some cases.</p> <p>14 Q. Okay. And were those officer-involved</p> <p>15 shooting cases or different types of cases?</p> <p>16 A. No. None -- none -- none were officer-</p> <p>17 involved shooting cases.</p> <p>18 Q. Okay. And what were the types of cases that</p> <p>19 you were asked to investigate when you were in West</p> <p>20 Miami?</p> <p>21 A. Improper conduct, false police reports -- all</p> <p>22 -- not reports, but overtime slips and -- and things of</p> <p>23 that nature.</p> <p>24 Q. Did you ever investigate cases involving</p> <p>25 allegations of misconduct by police officers towards</p>

<p style="text-align: right;">Page 58</p> <p>1 civilians?</p> <p>2 A. Yes. At least one I --</p> <p>3 Q. And were there any --</p> <p>4 A. -- at least one that I can remember in West</p> <p>5 Miami.</p> <p>6 Q. Okay. And in that instance in West Miami, did</p> <p>7 you find that the officer had engaged in any misconduct</p> <p>8 towards a civilian?</p> <p>9 A. Yes. There were some -- some findings that</p> <p>10 that -- that there was improper conduct on his part.</p> <p>11 Q. And what were the findings of misconduct in</p> <p>12 that case?</p> <p>13 A. Sir, I don't remember.</p> <p>14 Q. Do you recall anything about what the findings</p> <p>15 were against the officer?</p> <p>16 A. No. It was -- again, without being certain,</p> <p>17 without going back and reviewing the case, I would think</p> <p>18 that he was discourteous, that type of a thing.</p> <p>19 Q. Okay. Any discipline as a result of that?</p> <p>20 A. He may have been reprimanded. I'm not</p> <p>21 100 percent sure of that.</p> <p>22 Q. When you were in West Miami, do you recall any</p> <p>23 instances in which your investigations into allegations</p> <p>24 of misconduct by police officers towards civilians</p> <p>25 resulted in any suspensions or firings?</p>	<p style="text-align: right;">Page 60</p> <p>1 that fair?</p> <p>2 A. That's the one that I can remember now, yes.</p> <p>3 Q. When you were in the Miami Police Department -</p> <p>4 - how many years were you there?</p> <p>5 A. From 1980 to 2005, so 25.</p> <p>6 Q. So in the 25 years you were in the Miami</p> <p>7 Police Department, how many times did you recommend</p> <p>8 suspension or firing for a police officer based on</p> <p>9 misconduct towards a civilian?</p> <p>10 A. That was not part of my -- my job. We had a</p> <p>11 big Internal Affairs unit that would handle those types</p> <p>12 of things.</p> <p>13 Q. Okay. When you were in Miami, you did</p> <p>14 investigate officer-involved shootings, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And how many officer-involved shootings do you</p> <p>17 think you investigated while you were in Miami?</p> <p>18 A. A guess would be five, maybe as high as ten.</p> <p>19 Something like that.</p> <p>20 Q. In any of those five to ten officer-involved</p> <p>21 shootings that you investigated when you were in Miami,</p> <p>22 in any instance, did you find that the officer's conduct</p> <p>23 was not justified?</p> <p>24 A. That's not a decision that I make. We work in</p> <p>25 conjunction with the Internal Affairs unit and a</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes. There were -- there were several</p> <p>2 suspensions and firings on my part.</p> <p>3 Q. In West Miami?</p> <p>4 A. Yes, sir.</p> <p>5 Q. For what kinds of issues?</p> <p>6 A. One that I can remember offhand was theft of -</p> <p>7 - I don't know if it would be City property. It was a -</p> <p>8 - an -- an individual officer that was -- went to buy</p> <p>9 uniforms, and instead of getting them for himself, got</p> <p>10 them for his father. The other one that I can remember</p> <p>11 was claiming having gone to court, and not really going</p> <p>12 to court, on several occasions, and filing for overtime.</p> <p>13 Q. Okay. And I may not have asked a clear</p> <p>14 question, so let me focus on my question here, which is</p> <p>15 going to be focused on police misconduct in the</p> <p>16 treatment of civilians, okay? So let me just ask the</p> <p>17 question, but I just want to make that clear. In your</p> <p>18 time in West Miami, were there any instances in which</p> <p>19 you recommended suspension or firing for an officer</p> <p>20 based on a finding of misconduct towards a civilian?</p> <p>21 A. Not suspension and firing that I can remember.</p> <p>22 But either counseling or reprimand, I -- I would say</p> <p>23 yes.</p> <p>24 Q. Okay. And that was the one instance in which</p> <p>25 you gave a verbal reprimand for discourteous conduct; is</p>	<p style="text-align: right;">Page 61</p> <p>1 prosecutor from the State Attorney's office, so they --</p> <p>2 they would be the ones that would make that</p> <p>3 determination, not me.</p> <p>4 Q. And would you provide a recommendation?</p> <p>5 A. No. I would just submit my reports, and they</p> <p>6 would make that decision.</p> <p>7 Q. In any of those five to ten cases of officer-</p> <p>8 involved shooting that you investigated when you were in</p> <p>9 Miami, did you believe that the officer had engaged in</p> <p>10 misconduct in any of those cases?</p> <p>11 MR. KIVETZ: Objection. Form. Foundation.</p> <p>12 THE WITNESS: I cannot think of any offhand,</p> <p>13 but again, I -- I cannot be certain. I -- I don't</p> <p>14 know. I know that there were some cases that I was</p> <p>15 involved in in the periphery where the officers</p> <p>16 ended up getting arrested and going to trial. But</p> <p>17 again, those were not cases actually assigned to</p> <p>18 me, but that I've worked and handled, I've worked</p> <p>19 on and assisted on.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Were there any officer-involved shooting cases</p> <p>22 that you investigated in which you believed the shooting</p> <p>23 was not justified based on your involvement in the</p> <p>24 investigation?</p> <p>25 MR. KIVETZ: Objection. Form. Foundation.</p>

<p style="text-align: right;">Page 62</p> <p>1 THE WITNESS: None that I can think of right</p> <p>2 now. No, sir.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Were there any instances when you were in</p> <p>5 Miami or West Miami that you reported another officer</p> <p>6 for engaging in misconduct at any time?</p> <p>7 MR. KIVETZ: Object -- sorry. Against a</p> <p>8 civilian?</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Yeah. That -- that's a good question. Let --</p> <p>11 yeah. Let me -- I want to focus on civilian, so let me</p> <p>12 ask you again. Were there any instances during the</p> <p>13 course of the time that you worked in Miami or West</p> <p>14 Miami that you reported another officer for misconduct</p> <p>15 in the treatment of a civilian?</p> <p>16 A. Reported is not a -- a -- a -- a -- a good</p> <p>17 word for me, but I handled, and -- and -- and counseled,</p> <p>18 and -- and may have even reprimanded officers for -- for</p> <p>19 -- for that. But I wouldn't have -- I -- I wouldn't say</p> <p>20 I reported it to somebody else. I would've handled it</p> <p>21 myself, as a supervisor.</p> <p>22 Q. Can you explain what you mean by that? As a</p> <p>23 -- in your supervisory capacity, you would have reports</p> <p>24 made to you of misconduct by officers, and then you</p> <p>25 would conduct some investigation; am I understanding</p>	<p style="text-align: right;">Page 64</p> <p>1 certain, but I do not believe so.</p> <p>2 Q. Are there any instances during the course of</p> <p>3 your law enforcement career in which you observed</p> <p>4 another officer commit misconduct during the course of a</p> <p>5 criminal investigation?</p> <p>6 MR. KIVETZ: Objection to form. Foundation.</p> <p>7 THE WITNESS: No, sir. I can't remember</p> <p>8 offhand, but I -- I -- again, I cannot be</p> <p>9 100 percent certain.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Are there any instances during the course of</p> <p>12 your law enforcement career in which you reported</p> <p>13 another officer for deviating from accepted police</p> <p>14 practices during the course of a criminal investigation?</p> <p>15 MR. KIVETZ: Objection to form. Foundation.</p> <p>16 THE WITNESS: I would have to give the same</p> <p>17 answer. I can't recall anything right now, but I</p> <p>18 cannot be 100 percent certain.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Okay. And during the course of your -- strike</p> <p>21 that. During the course of your time working as an</p> <p>22 expert, are there any instances in which you found that</p> <p>23 a police officer deviated from generally accepted police</p> <p>24 practices?</p> <p>25 MR. KIVETZ: Objection. Form. Foundation.</p>
<p style="text-align: right;">Page 63</p> <p>1 that correctly or not?</p> <p>2 MR. KIVETZ: Objection. Form.</p> <p>3 THE WITNESS: No. I wouldn't say that</p> <p>4 officers would -- would send me that information.</p> <p>5 It would be something that either I observed, or</p> <p>6 that came -- a complaint that would come in from a</p> <p>7 citizen, something like that, but it -- I don't</p> <p>8 think I got a report, ever, from an officer saying,</p> <p>9 you need to look at this.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. And during the course of your years, did you</p> <p>12 ever say to Internal Affairs, or a supervisor, or</p> <p>13 anybody else, hey, I believe this officer has engaged in</p> <p>14 misconduct in the course of their treatment of a</p> <p>15 civilian?</p> <p>16 MR. KIVETZ: Objection. Form. Foundation.</p> <p>17 THE WITNESS: I can't be 100 percent certain,</p> <p>18 but I do not believe so.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Is there any time during the course of your</p> <p>21 law enforcement career that you reported to a</p> <p>22 supervisor, or to Internal Affairs, that another officer</p> <p>23 had committed misconduct during the course of an</p> <p>24 investigation?</p> <p>25 A. Again, without -- cannot be 100 percent</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: Do you mean in cases that I have</p> <p>2 reviewed and documents that have been sent to me</p> <p>3 and -- by -- by attorneys?</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Yeah. Thank you for that clarification. So</p> <p>6 as an expert, tell me the kind of capacities in which</p> <p>7 you've worked as an expert, other than as a consultant</p> <p>8 in reviewing police files and offering opinions in</p> <p>9 lawsuits?</p> <p>10 MR. KIVETZ: Objection --</p> <p>11 THE WITNESS: No. That's -- that's the only</p> <p>12 type of expert work that I've done.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. Okay. Thank you. So in your capacity as an</p> <p>15 expert, are there any cases in which you found any</p> <p>16 deviations from generally accepted police practices by</p> <p>17 any officer?</p> <p>18 A. No, sir. I can't say that -- that I have. I</p> <p>19 mean, again, if we look at some of the allegations that</p> <p>20 -- that have been made in some of the reports by</p> <p>21 Plaintiffs of police misconduct, those, if they were to</p> <p>22 be true, would be inconsistent with police practices.</p> <p>23 Again, I'm not -- I'm not offering an -- an opinion on -</p> <p>24 - on truth or -- or not truth, or who's telling the</p> <p>25 truth and who's not. Simply, that's up to the trier of</p>



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1 facts. I'm just offering what my experience has been.  
 2 Q. And in any of the cases that you've offered  
 3 expert opinions in, has it been your opinion that the  
 4 officers deviated -- that any of the officers deviated  
 5 from generally accepted police practices?

6 A. There may have been things that could have  
 7 been done differently. Sometimes things fall through  
 8 the cracks. But as far as intentional misconduct, I  
 9 have not seen, in any of the reports that I reviewed.

10 Q. In any of your reports as an expert, have you  
 11 ever documented anything that the officers could have  
 12 done differently?

13 MR. KIVETZ: Objection. Form. Foundation.

14 THE WITNESS: I -- without reviewing all the  
 15 other reports, I -- I can't answer 100 percent, but  
 16 I would say, yes, that -- that I have said that --  
 17 that this could have been handled differently or  
 18 that they could have done something additional.  
 19 But then again, that happens to every detective in  
 20 every case. You always have 20/20 vision, you  
 21 know, the day after.

22 BY MR. SWAMINATHAN:

23 Q. In your report in the Thomas Sierra case, did  
 24 you include anything in your report about things that  
 25 you thought could be done differently?

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1 A. I'd --

2 MR. KIVETZ: Objection. Form. Foundation.

3 THE WITNESS: I'd have to read it completely  
 4 again, but I can't say for certain whether I did or  
 5 not. If you'd like me to go through it?

6 BY MR. SWAMINATHAN:

7 Q. Yeah. Please go through it. Tell me if you  
 8 identify any things that you think could have been done  
 9 differently in your report?

10 MR. KIVETZ: Yeah. Okay.

11 MR. SWAMINATHAN: Hey, sorry, can we take a  
 12 quick five-minute break, guys?

13 THE WITNESS: Sure.

14 MR. SWAMINATHAN: Thank you. I appreciate it.  
 15 Sorry.

16 THE REPORTER: All right. We are off the  
 17 record. The time is 11:21 --

18 (OFF THE RECORD)

19 THE REPORTER: We are back on the record for  
 20 the deposition of Nelson Andreu being conducted by  
 21 videoconference. My name is Sydney Little. Today  
 22 is May 12th, 2023, and the time is 11:30 a.m.  
 23 Central.

24 BY MR. SWAMINATHAN:

25 Q. Thank you, Mr. Andreu. I apologize for that.

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1 My question that I had asked before we took a break was:  
 2 Do you -- in your report in the Thomas Sierra case, do  
 3 you identify any specific things that you think could be  
 4 -- could have been done differently during the course of  
 5 the Andujar homicide investigation?

6 A. No, nothing specific. On Page 9, Points 39  
 7 and 40, I explained that no -- no homicide case is  
 8 perfect or ever handled the same. But specifically  
 9 pointing out things that would've been done different,  
 10 no, sir.

11 Q. Okay. And do you, having had a chance to  
 12 review all of the materials in this case, find that  
 13 there are any things that could have been done  
 14 differently in this case?

15 MR. KIVETZ: Objection. Form.

16 THE WITNESS: Probably -- I'm just trying to  
 17 think of -- of anything specific that I would have  
 18 done different. No, not -- not necessarily.  
 19 Nothing's coming up right off the top of my head of  
 20 anything that could be done different.

21 BY MR. SWAMINATHAN:

22 Q. When you reviewed all the documents and  
 23 reports in this case, did you think to yourself that  
 24 there was anything you saw in those documents that you  
 25 would have done differently if you were conducting the

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1 investigation?

2 MR. KIVETZ: Objection. Form. Foundation.

3 THE WITNESS: No, sir. I can't recall  
 4 anything right now that would've been done  
 5 different. No.

6 BY MR. SWAMINATHAN:

7 Q. This is not the first case in which you have  
 8 opined that involves Detective Reynaldo Guevara,  
 9 correct?

10 A. Correct.

11 Q. And you understand that Detective Guevara has  
 12 pleaded the Fifth with regard to his conduct during the  
 13 course of this homicide investigation?

14 MR. KIVETZ: Objection. Form.

15 THE WITNESS: Yes.

16 BY MR. SWAMINATHAN:

17 Q. And you reviewed his deposition testimony in  
 18 this case, correct?

19 A. Yes.

20 Q. Would it be a fair summary to say that he --  
 21 when asked about every aspect of his involvement in this  
 22 investigation, he pleaded the Fifth?

23 A. Yes.

24 Q. Okay. And did you consider that at all in  
 25 forming your opinions in this case?

<p style="text-align: right;">Page 70</p> <p>1 A. Well, both Guevara and Halvorsen at one point  2 in their depositions took the -- plead the Fifth. Again,  3 to me, that's not an admission or a denial. It's simply  4 no answer. Similar in fashion to when Sierra didn't  5 testify at his trial. The -- the jury should not draw  6 upon that, that he's lying or being truthful. It was  7 simply no answer.</p> <p>8 Q. So for your -- purposes of your opinions, you  9 treated the pleading of the Fifth by Detectives Guevara  10 and Halvorsen regarding their conduct in this case as  11 basically being the equivalent of no answer, fair?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 THE WITNESS: Yes, sir.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Okay. And ultimately did you, in offering  16 your opinions, include anywhere in your opinions that  17 they had asserted the Fifth Amendment?</p> <p>18 A. No, sir, I did not. I should add that  19 Halvorsen, later on, did provide answers to questions on  20 -- on deposition.</p> <p>21 Q. In which case?</p> <p>22 A. In this case.</p> <p>23 Q. Mr. Halvorsen gave deposition testimony in the  24 Thomas Sierra case?</p> <p>25 MR. KIVETZ: Objection. Form.</p>	<p style="text-align: right;">Page 72</p> <p>1 THE WITNESS: No, sir. Not -- not that I can  2 remember. No, sir.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Why not?</p> <p>5 MR. KIVETZ: Objection. Form.</p> <p>6 THE WITNESS: As I explained before, I didn't  7 believe the need [sic] my attorneys or the State  8 Attorney did not instruct me to do so, so it -- it  9 just never occurred.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Do you have -- sitting here today, do you have  12 any knowledge or understanding of how many convictions  13 have been thrown out that were cases investigated by  14 Detective Guevara and his colleagues at Area 5?</p> <p>15 A. I know there were several. The -- the -- the  16 number, I don't know.</p> <p>17 Q. When you say several, what do you mean?</p> <p>18 A. I don't know, a handful, I'm guessing.</p> <p>19 Q. Your understanding is that there's  20 approximately a handful of convictions that were thrown  21 out involving Detective Guevara and his colleagues at  22 Area 5?</p> <p>23 MR. KIVETZ: Objection. Form. Foundation.</p> <p>24 THE WITNESS: That's what I -- I believe, that  25 number, more or less.</p>
<p style="text-align: right;">Page 71</p> <p>1 THE WITNESS: He -- he -- I -- I know that he  2 later answered questions. I don't remember if it  3 was a deposition or -- or where it was. But  4 initially, they both invoked the Fifth, and that,  5 to me, is just a no answer.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Okay. And during the course of your career,  8 in the many hundreds of times that you had been deposed  9 and given testimony, did you ever plead the Fifth?</p> <p>10 A. No, sir.</p> <p>11 Q. Why not?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 THE WITNESS: It never came up that that was  14 and -- and the -- the State Attorney or Counsel  15 never instructed me to do so.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Did you ever consider pleading the Fifth in  18 any case in which you testified?</p> <p>19 MR. KIVETZ: Anand, you're talking about  20 criminal cases, right?</p> <p>21 MR. SWAMINATHAN: Yeah, thank you. In any  22 criminal case in which you testified at deposition  23 or at the criminal trial, did you ever consider  24 pleading the Fifth?</p> <p>25 MR. KIVETZ: Objection.</p>	<p style="text-align: right;">Page 73</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. Is there any number of convictions  3 being thrown out that would cause you to question the  4 integrity of the underlying police investigation?</p> <p>5 MR. KIVETZ: Objection. Form, foundation,  6 speculative.</p> <p>7 THE WITNESS: I don't think that a number,  8 whether it is one or 100, go to the integrity of  9 the investigations involved in this. There are  10 reasons why people change their testimony, recant  11 later on, make accusations of police misconduct or  12 abuse. So just -- just a number, in my opinion,  13 would not be a generalization to say that the  14 police investigations were flawed.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Is there any number of exonerations or  17 convictions being vacated that would cause you to have  18 pause about offering opinions that there were no  19 violations of accepted police practices?</p> <p>20 MR. KIVETZ: Objection. Form, foundation,  21 speculative.</p> <p>22 THE WITNESS: Again, no -- no number. I know  23 that the -- the State Attorney in -- in Cook County  24 has refused to prosecute or bring these cases back  25 to trial for whatever reason she has. And that</p>

<p style="text-align: right;">Page 74</p> <p>1 doesn't say that the case could not be proven</p> <p>2 again, they just -- or she just does not want to</p> <p>3 bring these cases forward again. So she is the one</p> <p>4 that's making that decision.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Do you have an opinion about whether that was</p> <p>7 an appropriate decision?</p> <p>8 A. Do I have an --</p> <p>9 MR. KIVETZ: Objection. Form, foundations,</p> <p>10 speculative.</p> <p>11 THE WITNESS: Ask that again, please. I'm</p> <p>12 sorry.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. Do you have an opinion about whether the Cook</p> <p>15 County State's Attorney's decision not to retry</p> <p>16 individuals whose cases involve Detective Guevara,</p> <p>17 whether that's a good decision or not?</p> <p>18 MS. BARBER: Also calls for a legal</p> <p>19 conclusion.</p> <p>20 MR. KIVETZ: Yeah. Objection. Form,</p> <p>21 foundation, speculative, and then calls for --</p> <p>22 THE WITNESS: That's -- that's not a decision</p> <p>23 that's -- that's up to me to make, no, sir. I</p> <p>24 don't know.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 76</p> <p>1 does not -- does not change for me.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. If there were 40 convictions thrown out</p> <p>4 involving Detective Guevara, would that cause you to</p> <p>5 have any pause about offering opinions that his work in</p> <p>6 the underlying investigations was good in each of those</p> <p>7 cases?</p> <p>8 MR. KIVETZ: Objection. Form, foundation,</p> <p>9 asked and answered.</p> <p>10 THE WITNESS: I've never been asked to opine</p> <p>11 on Detective Guevara or the allegations of abuse.</p> <p>12 So no, I'm not -- I can't answer that.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. In your report, are you intending to offer any</p> <p>15 opinions about whether Detective Guevara followed</p> <p>16 generally accepted police practices?</p> <p>17 A. It's my opinion --</p> <p>18 MR. KIVETZ: Objection to form.</p> <p>19 THE WITNESS: It's my opinion that all the</p> <p>20 detectives involved in this case did.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Okay. And is it your opinion that Detective</p> <p>23 Guevara followed generally accepted police practices in</p> <p>24 this case?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Do you have any opinions about it?</p> <p>2 A. No, I don't have an opinion --</p> <p>3 MR. KIVETZ: Objection. Form, foundation,</p> <p>4 speculative.</p> <p>5 MR. SWAMINATHAN: And if Detective Guevara had</p> <p>6 been involved in a hundred cases that resulted</p> <p>7 in convictions being thrown out, would that cause</p> <p>8 you to have any pause about offering opinions that</p> <p>9 there were no deviations from accepted police</p> <p>10 practices?</p> <p>11 MR. KIVETZ: Objection. Form, foundation,</p> <p>12 speculative, and --</p> <p>13 THE WITNESS: No, sir. No, sir.</p> <p>14 MR. KIVETZ: -- asked and answered.</p> <p>15 THE WITNESS: Like I said, the number itself</p> <p>16 wouldn't -- wouldn't change for me.</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. Okay. And so the fact that there have been</p> <p>19 approximately 40 convictions that have been thrown out</p> <p>20 in cases involving Detective Guevara, that's of no</p> <p>21 importance to you for purposes of your opinions about</p> <p>22 whether there were deviations from accepted police</p> <p>23 practices; is that fair?</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 THE WITNESS: No, the -- the number again,</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. And you reviewed the documents in the Arturo</p> <p>2 Reyes and Gabrielle Solache case, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And in that case, you found that Detective</p> <p>5 Guevara had not deviated from any generally accepted</p> <p>6 police practices, correct?</p> <p>7 A. That is correct. Again, if you -- I did read</p> <p>8 the allegations being made by the plaintiffs in that</p> <p>9 case in which they allege misconduct, but I did not see</p> <p>10 it, other than those allegations.</p> <p>11 Q. Okay. And you didn't -- and in the Reyes-</p> <p>12 Solache case, you did not credit any testimony of any</p> <p>13 witnesses indicating misconduct by Detective Guevara,</p> <p>14 fair?</p> <p>15 MR. KIVETZ: Objection to form.</p> <p>16 THE WITNESS: Again, I'm not here to judge</p> <p>17 who's telling the truth and who's not. I'm just</p> <p>18 saying that what I read, the totality of the</p> <p>19 investigation was properly conducted.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Okay. Based on the assumption that, in fact,</p> <p>22 Mr. Guevara had not engaged in the misconduct that was</p> <p>23 alleged in that case, fair?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And in this case too, your opinion is</p>



<p style="text-align: right;">Page 78</p> <p>1 based on the assumption that Mr. Guevara did not engage</p> <p>2 in any of the misconduct that's alleged in this case,</p> <p>3 correct?</p> <p>4 MR. KIVETZ: Objection. Form.</p> <p>5 THE WITNESS: Yes. I'm sorry, yes.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Okay. And in this case, your opinions are</p> <p>8 based on the assumption that none of the other officers</p> <p>9 engaged in any of the misconduct that's alleged in this</p> <p>10 case, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So did you ever conduct eyewitness</p> <p>13 identifications during your time as a police officer?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And how did you go about conducting eyewitness</p> <p>16 identification procedures?</p> <p>17 A. Primarily there were photo displays and on --</p> <p>18 on several occasions, they were actual live lineups, but</p> <p>19 primarily photo.</p> <p>20 Q. In other words, when you say photo, you --</p> <p>21 you're referring of like what Chicago Police Department</p> <p>22 calls photo arrays?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And so how would you go about conducting photo</p> <p>25 arrays?</p>	<p style="text-align: right;">Page 80</p> <p>1 you had -- all of the individuals in the lineup were</p> <p>2 suspects?</p> <p>3 MR. KIVETZ: Objection. Form, foundation.</p> <p>4 THE WITNESS: No, sir. I never did that.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. If you had multiple suspects in a case, would</p> <p>7 you include them in the same photo array when you were</p> <p>8 in Miami?</p> <p>9 MR. KIVETZ: Objection. Form, foundation,</p> <p>10 speculative, incomplete hypothetical.</p> <p>11 THE WITNESS: Probably not, but I can't say</p> <p>12 that it wasn't done. But more than likely no.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. But your practice -- strike that. Your</p> <p>15 practice in Miami was to -- when doing photo arrays, was</p> <p>16 to have one suspect and five fillers, correct?</p> <p>17 MR. KIVETZ: Objection. Form and foundation.</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. And the five fillers, were they individuals</p> <p>21 that you believed looked sufficiently similar to the</p> <p>22 suspect?</p> <p>23 A. Yes. Not --</p> <p>24 Q. And it was important to you -- I'm sorry, go</p> <p>25 ahead.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. The police department had a folder with six</p> <p>2 cutouts with numbers underneath, and we would place a</p> <p>3 photograph in each of those four cutouts. One of them</p> <p>4 would be a photograph of the suspect.</p> <p>5 Q. And so when you did photo procedures in Miami,</p> <p>6 you showed the witness a suspect plus three other</p> <p>7 photos?</p> <p>8 A. No, five --</p> <p>9 MR. KIVETZ: Objection. Form.</p> <p>10 THE WITNESS: Five other photos. Six total.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Okay. Thank you. And were you doing photo</p> <p>13 procedures -- strike that. Were you doing photo</p> <p>14 identification procedures in Miami in the 1990s?</p> <p>15 A. Yes.</p> <p>16 Q. And when you conducted photo identification</p> <p>17 procedures in Miami in the 1990s, you used six total</p> <p>18 photos; is that correct?</p> <p>19 A. That is correct.</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. And in that example, you would have one person</p> <p>23 who is your suspect, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Would you ever conduct photo arrays in which</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Not twins, but sufficiently similar to not be</p> <p>2 biased.</p> <p>3 Q. And so why was it important to have fillers</p> <p>4 that weren't -- that looked sufficiently similar?</p> <p>5 A. To avoid a suppression of the lineup and the</p> <p>6 identification later on in trial and -- and just to make</p> <p>7 it fair.</p> <p>8 Q. Okay. And when you conducted photo array</p> <p>9 procedures in the 1990s in Miami, your fillers were not</p> <p>10 other suspects; is that fair?</p> <p>11 MR. KIVETZ: Objection. Form and foundation.</p> <p>12 THE WITNESS: No, they were just photographs</p> <p>13 from our crime scene area where they had hundreds</p> <p>14 of them.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. When you conducted photo procedures in</p> <p>17 the 1990s, what instructions would you give the</p> <p>18 witnesses before you had them view the photo array?</p> <p>19 MR. KIVETZ: Objection. Form and foundation.</p> <p>20 THE WITNESS: Generally it was, I'm going to</p> <p>21 show you a group of photographs, see if there's</p> <p>22 anybody there that you recognize and from where. I</p> <p>23 would tell them that -- take into consideration</p> <p>24 that people have beards, they take their beards</p> <p>25 off. They have short hair, they have long hair,</p>

<p style="text-align: right;">Page 82</p> <p>1 they change the color of their hair, just to look</p> <p>2 at the face of the individuals.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And was there any kind of admonition form that</p> <p>5 you would read to the witnesses before they viewed photo</p> <p>6 arrays?</p> <p>7 MR. KIVETZ: Objection. Form, foundation. And</p> <p>8 then in the entirety of the 1990s; is that what</p> <p>9 we're talking about?</p> <p>10 MR. SWAMINATHAN: Yes, during the '90s.</p> <p>11 MR. KIVETZ: -- 1990 to 1999?</p> <p>12 THE WITNESS: I -- I believe that at one point</p> <p>13 those admonitions, like -- like I just said, were</p> <p>14 printed on the back of that six folder, but I can't</p> <p>15 tell you when that was. I'm not even 100 percent</p> <p>16 sure if it was ever done, but I just remember that</p> <p>17 in the back of my mind. But my words to the</p> <p>18 witness were usually basically what I just</p> <p>19 explained.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Okay. And when you showed photo array to</p> <p>22 witnesses in the 1990s, would you tell them that the</p> <p>23 person that you believed committed the crime was in the</p> <p>24 photos?</p> <p>25 MR. KIVETZ: Objection. Form, foundation,</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. And would you document their level of</p> <p>2 confidence?</p> <p>3 A. Yes.</p> <p>4 Q. Was it your practice to document the level of</p> <p>5 confidence of the witnesses when they viewed photo</p> <p>6 arrays?</p> <p>7 MR. KIVETZ: Objection. Form, foundation.</p> <p>8 From 1991 to 1999?</p> <p>9 MR. SWAMINATHAN: Yeah, through the '90s.</p> <p>10 THE WITNESS: I would have to say yes, there</p> <p>11 would be some kind of documentation.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Did you admonish witnesses when they viewed</p> <p>14 lineups or photo arrays in the 1990s that the person who</p> <p>15 committed the crime may or may not be in the photo</p> <p>16 array?</p> <p>17 A. I don't think I used those words, "may or may</p> <p>18 not be." I just didn't tell them he or she was in</p> <p>19 there. And I told them to, if they recognize anyone,</p> <p>20 which one, which number, and the circumstances behind,</p> <p>21 you know, what was -- where does he or she recognize</p> <p>22 that person from?</p> <p>23 Q. When you conducted photo array procedures in</p> <p>24 the 1990s, would you document the fact that you'd shown</p> <p>25 photos to the witness, regardless of what the outcome of</p>
<p style="text-align: right;">Page 83</p> <p>1 speculative.</p> <p>2 THE WITNESS: I don't believe I ever said that</p> <p>3 to an individual.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Would -- I'm sorry, go ahead.</p> <p>6 A. No, to an individual.</p> <p>7 Q. Why not?</p> <p>8 MR. KIVETZ: Objection. Form.</p> <p>9 THE WITNESS: I just didn't.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. When you were showing photo arrays in the</p> <p>12 1990s, would you tell the witnesses not to guess?</p> <p>13 MR. KIVETZ: Objection. Form.</p> <p>14 THE WITNESS: Ye -- yes, and sometimes the</p> <p>15 witness would say, well, this kind of looks like</p> <p>16 him or her, except for the hair or whatever. And</p> <p>17 I'd say, remember, don't look at the hair, just</p> <p>18 look at the face.</p> <p>19 And if they did not give me 100 percent</p> <p>20 identification, then I would ask them, well, what,</p> <p>21 you know, give me a percentage of what you think</p> <p>22 that is. Again, that was, if they'd say 70 percent,</p> <p>23 that negated probable cause for an arrest, but it</p> <p>24 helped me in -- in continuing the investigation.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 85</p> <p>1 the lineup was?</p> <p>2 MR. KIVETZ: Objection. Form. I don't really</p> <p>3 understand the question.</p> <p>4 THE WITNESS: Yeah. If you could phrase that</p> <p>5 a different way, yes.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Sure, Mr. Andreu. When you conducted photo</p> <p>8 array procedures in the 1990s, would you document the</p> <p>9 outcome of the photo array procedure, whether it</p> <p>10 resulted in a positive identification or a negative</p> <p>11 identification?</p> <p>12 A. I would say more likely than not, yes.</p> <p>13 Q. What do you mean by more likely than not?</p> <p>14 A. Well, I -- I -- I can't remember every</p> <p>15 specific case that -- that I showed a photo array and</p> <p>16 there was or wasn't an identification. But I would say</p> <p>17 that normally, there would be a -- a documentation, but</p> <p>18 I can't say 100 percent of the time, because it's just</p> <p>19 too many of them, and I don't remember.</p> <p>20 Q. If there were -- if the -- you showed a</p> <p>21 witness a photo array and they were not able to identify</p> <p>22 the suspect, was it your practice to document that?</p> <p>23 A. Again, I --</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 THE WITNESS: Again, I've got to give the same</p>

<p style="text-align: right;">Page 86</p> <p>1 answer, more likely than not, but I can't say</p> <p>2 100 percent that that would be documented. But I</p> <p>3 would -- I would try to, if I -- if -- if that</p> <p>4 would be the answer.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. In Miami, if you conducted photo arrays with</p> <p>7 witnesses, did you then conduct subsequent lineups with</p> <p>8 those witnesses, live lineups?</p> <p>9 A. Not necess --</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: Not necessarily. I probably</p> <p>12 conducted no more than ten live lineups, 15 live</p> <p>13 lineups in -- in all the cases that I investigated.</p> <p>14 It was just a photo array.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. How many photo arrays do you think you</p> <p>17 conducted during the course of your time in Miami?</p> <p>18 A. Oh, God, hundreds.</p> <p>19 Q. Okay. And how many total live lineups did you</p> <p>20 say you conducted?</p> <p>21 A. Five, ten, 15 at the most.</p> <p>22 Q. Why didn't you conduct live lineups very</p> <p>23 often?</p> <p>24 A. It was just what I was taught by -- by senior</p> <p>25 detectives, that's -- that's how it was done. The State</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. KIVETZ: Objection. Form, foundation,</p> <p>2 speculative.</p> <p>3 THE WITNESS: We usually used civilian</p> <p>4 employees. I know that in -- in my reading of</p> <p>5 Chicago cases, they go down to -- to the lockup and</p> <p>6 -- and, you know, bring up other inmates. We never</p> <p>7 did that. We don't -- our -- our -- our prisoner</p> <p>8 processing area, many times, was empty. You know,</p> <p>9 they tried to get them out of there and to the</p> <p>10 county jail as quick as possible. So we would go</p> <p>11 around the building and -- and choose civilian</p> <p>12 employees to put them in a lineup, usually.</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. Okay. And that's -- would you agree with me</p> <p>15 that's not an ideal circumstance for trying to create a</p> <p>16 fair lineup?</p> <p>17 MR. KIVETZ: Objection. Form, foundation,</p> <p>18 misstates his testimony.</p> <p>19 THE WITNESS: I don't understand why you're</p> <p>20 saying --</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. What is -- go ahead.</p> <p>23 A. I don't understand why you say that that's not</p> <p>24 fair or proper.</p> <p>25 Q. Yeah, I mean, conducting a live lineup with</p>
<p style="text-align: right;">Page 87</p> <p>1 Attorney's Office didn't have a requirement that that be</p> <p>2 done. And I think the times when I did do a live lineup</p> <p>3 was probably when the witness was 90 percent sure or</p> <p>4 something like that, and I wanted to actually have them</p> <p>5 view the person live to see if the individual that</p> <p>6 committed the crime was -- was in that group.</p> <p>7 Q. So in the instances -- in the limited</p> <p>8 instances when you conducted live lineups, your</p> <p>9 recollection is that it was typically when the witness</p> <p>10 wasn't entirely certain in the photo array procedure,</p> <p>11 and so you wanted to see if they could develop more</p> <p>12 confidence in the live lineup; is that fair?</p> <p>13 A. I wouldn't say all the time, but sometimes</p> <p>14 yes.</p> <p>15 Q. Yeah. Other than the circumstance in which</p> <p>16 the witness wasn't sure during the photo array</p> <p>17 procedure, what are other circumstances in which you did</p> <p>18 a live lineup in Miami?</p> <p>19 A. I -- I can't think of the specific reasons why</p> <p>20 it was done, no, not at this time.</p> <p>21 Q. In your experience in Miami, was it that --</p> <p>22 did you find that it was harder to be able to conduct</p> <p>23 fair live lineups as compared to photo arrays where you</p> <p>24 have many, many more pictures that you can use to</p> <p>25 identify fillers?</p>	<p style="text-align: right;">Page 89</p> <p>1 civilian employees in the department is going to give</p> <p>2 you a limited set of options for trying to create a</p> <p>3 lineup in which your fillers look sufficiently similar</p> <p>4 to your suspect; do you agree?</p> <p>5 MR. KIVETZ: Objection. Form, foundation,</p> <p>6 speculative.</p> <p>7 THE WITNESS: We had to do our best with what</p> <p>8 we had. But again, I don't know how many inmates</p> <p>9 that Chicago Police Department can have at one time</p> <p>10 in the lockup and how many of those are willing to</p> <p>11 participate in a -- in a lineup where there were</p> <p>12 hundreds of employees in the police department that</p> <p>13 we could choose from.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. How often -- strike that. You said that you</p> <p>16 probably conducted around ten to 15 total live lineups</p> <p>17 during your career in Miami. How often did you conduct</p> <p>18 live lineups with the witness after they had already</p> <p>19 previously viewed a photo array?</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: I can't provide you a number,</p> <p>22 whether it was done or it was not done. I -- I</p> <p>23 just simply don't remember.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. Can you recall any instances in which you</p>

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1 conducted a photo array and obtained a positive  
 2 identification and then conducted a subsequent live  
 3 lineup with that same witness and the same suspect?  
 4 MR. KIVETZ: Objection. Form, foundation.  
 5 THE WITNESS: Again, I can't answer  
 6 100 percent, but I'm sure that -- that between  
 7 those five, ten, 15, it was probably done on -- on  
 8 at least one occasion. I can't rule it out  
 9 100 percent.  
 10 BY MR. SWAMINATHAN:  
 11 Q. Okay. And is it fair to say that in Miami,  
 12 your typical practice was not to conduct a photo array  
 13 with a witness viewing a suspect and then have that same  
 14 witness view the same suspect in a live lineup  
 15 afterward?  
 16 MS. BARBER: Objection. Form. Misstates the  
 17 testimony.  
 18 THE WITNESS: No, I wouldn't say that that was  
 19 policy. It was, like I said before -- I can't tell  
 20 you how many times if it was done, if it was ever  
 21 done, I just don't remember. But it wasn't a  
 22 policy that I -- that I can remember.  
 23 BY MR. SWAMINATHAN:  
 24 Q. Thank you. Let me -- let me make sure my  
 25 question is clear. Having a witness view a suspect in a

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1 photo array and then having that same witness view the  
 2 same suspect in a live lineup, that was not a typical  
 3 practice in Miami; is that fair?  
 4 A. Typical practice, again, is -- is -- is a  
 5 broad -- is very broad. I just would -- would say that  
 6 it did not happen often.  
 7 Q. Okay. And --  
 8 A. Would be a better answer.  
 9 Q. And during the course of your career, it was  
 10 not your typical practice to conduct a photo array with  
 11 a witness viewing a suspect and then have them view a  
 12 subsequent lineup with that same witness viewing the  
 13 same suspect; is that fair?  
 14 A. Well --  
 15 MR. KIVETZ: Objection. Form.  
 16 THE WITNESS: Come to think of it, I remember  
 17 doing it one time on a -- on a very high-profile  
 18 case. So it was done by me at least one time.  
 19 BY MR. SWAMINATHAN:  
 20 Q. And so it was not your typical practice; is  
 21 that fair?  
 22 A. It -- I was not done every time. So if you  
 23 want to say that's typical practice, then so be it.  
 24 Q. And in the one case where you do recall having  
 25 a witness view the suspect in a photo array and then in

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1 a live lineup, what was the reason you did that?  
 2 A. It was a person who viewed her parents killed  
 3 when she was, like, 10 years old. And we identified the  
 4 suspect when she was like, I don't know, 15 or 20 years  
 5 old. She was -- she viewed a lineup and asked, if -- if  
 6 I'm not mistaken, she's the one that asked, can I  
 7 actually see the person, and we conducted a live lineup  
 8 in that instance.  
 9 Q. In the 1990s, would you agree with  
 10 Mr. Tiderington that it was known in police departments  
 11 that there was this phenomenon of false identifications?  
 12 MR. KIVETZ: Objection. Form.  
 13 THE WITNESS: Aware is, again, is a -- is a  
 14 broad word. I never experienced that in the  
 15 hundreds of cases that -- that I investigated. So  
 16 -- or that anyone that worked for me investigated.  
 17 BY MR. SWAMINATHAN:  
 18 Q. When you say you never experienced that, never  
 19 experienced what?  
 20 A. I never experienced a witness identify,  
 21 falsely, a -- a suspect.  
 22 Q. As far as you know?  
 23 MR. KIVETZ: Objection. Form, foundation.  
 24 THE WITNESS: I don't know what you mean by as  
 25 far as I know.

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1 BY MR. SWAMINATHAN:  
 2 Q. Well, are you saying that in every single  
 3 instance, you can say with certainty that the witness's  
 4 identification was accurate?  
 5 MR. KIVETZ: Objection. Form.  
 6 THE WITNESS: Yes, I can say that because it  
 7 was backed up either by another witness, physical  
 8 evidence, a confession, something like that.  
 9 BY MR. SWAMINATHAN:  
 10 Q. How often during the course of your career  
 11 would you close a case based on only eyewitness  
 12 identifications?  
 13 MR. KIVETZ: Objection. Form, foundation.  
 14 THE WITNESS: I -- I can't say that. I know  
 15 it happened, but I can't give you a number.  
 16 BY MR. SWAMINATHAN:  
 17 Q. Were there any cases in which you -- during  
 18 the course of your career, where you determined that  
 19 eyewitness identifications were not going to be  
 20 reliable?  
 21 A. No, sir. I can't say I did.  
 22 Q. Were there -- are there any circumstances,  
 23 based on your experience, where you would say that's  
 24 just a circumstance in which it would be too difficult  
 25 for somebody to make a reliable identification?



<p style="text-align: right;">Page 94</p> <p>1 MR. KIVETZ: Objection. Form, foundation, 2 speculative, incomplete hypothetical. 3 THE WITNESS: Explain that to me again, 4 please. 5 BY MR. SWAMINATHAN: 6 Q. Yeah. Like is there -- in your -- from your 7 experience, would you say, well, look, if a person is 8 500 yards away, they could not possibly make a reliable 9 identification? 10 MR. KIVETZ: Objection. Form, foundation, 11 speculative. 12 THE WITNESS: If someone was 500 yards away, I 13 wouldn't even bother to show them a lineup. 14 BY MR. SWAMINATHAN: 15 Q. So during the -- so as an investigator, you 16 would make assessments about whether you thought the 17 witnesses were in a position to be able to make 18 identifications; is that fair? 19 MR. KIVETZ: Objection. Form. 20 THE WITNESS: I would say an assessment was 21 made, yes. 22 BY MR. SWAMINATHAN: 23 Q. Yeah. And really any time as a detective or 24 investigator that you were speaking with witnesses, 25 you're assessing those witnesses and their credibility;</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And when you were speaking with eyewitnesses, 2 when you would ask them about the circumstances of what 3 they had observed, you'd be making assessments about 4 whether or not you thought they could make a reliable 5 identification of a suspect; is that fair? 6 MR. KIVETZ: Objection. Form. 7 THE WITNESS: Yes, you could say that's fair 8 most of the time, yes. 9 BY MR. SWAMINATHAN: 10 Q. And when you interviewed eyewitnesses, would 11 you ask them if they could identify the perpetrator? 12 MR. KIVETZ: Objection. Form. 13 THE WITNESS: I -- not all the time, but that 14 could be asked. I mean, if -- if, for example, 15 there's a -- a bank robbery-murder and there's ten 16 people in the -- in the lobby standing 20 feet away 17 from the guy, I -- I wouldn't have to ask them. I 18 would -- I would assume that they could make an 19 identification. 20 BY MR. SWAMINATHAN: 21 Q. So are there certain -- are you saying that 22 your practice was to typically ask eyewitnesses if they 23 could make an identification, or not? 24 MR. KIVETZ: Objection. Form. 25 THE WITNESS: No, no, not necessarily. If I</p>
<p style="text-align: right;">Page 95</p> <p>1 is that fair? 2 MR. KIVETZ: Objection. Form. 3 THE WITNESS: Yes. To some extent, yes. 4 BY MR. SWAMINATHAN: 5 Q. Okay. And that's part of your job as a police 6 officer, to try to assess whether the people who are 7 telling you things are telling you the truth or not, 8 fair? 9 MR. KIVETZ: Objection. Form, foundation. 10 THE WITNESS: Correct. 11 BY MR. SWAMINATHAN: 12 Q. And as a police officer, when you spoke with 13 witnesses, part of what you were doing was assessing 14 whether the information they were giving you was 15 inconsistent with other information that you knew about 16 the case; is that fair? 17 MR. KIVETZ: Objection. Form. 18 THE WITNESS: Yes, that's fair. 19 BY MR. SWAMINATHAN: 20 Q. And that's one of the ways that you would 21 assess whether or not the witnesses were giving you 22 truthful or reliable information, correct? 23 MR. KIVETZ: Objection. Form. 24 THE WITNESS: One of the ways, yes. 25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 97</p> <p>1 believe that they could make an identification, 2 that -- that there -- there were times where the -- 3 like the example you gave, they're 500 yards away, 4 the witness says there's, you know, there's no way 5 I can identify, I didn't see his face, or her face. 6 BY MR. SWAMINATHAN: 7 Q. Were there certain -- what are the kinds of 8 circumstances in which, as a police officer, you'd make 9 the determination that this is not a circumstance in 10 which the person can make a reliable identification? 11 MR. KIVETZ: Objection. Form, speculative. 12 THE WITNESS: Again, speculating, it would be 13 your example of 500 yards away, the individual was 14 wearing a mask. That's just two examples. I'm 15 sure there are others. 16 BY MR. SWAMINATHAN: 17 Q. Okay. So distance would be a kind of thing 18 you would take into consideration in terms of whether or 19 not your witness could make an identification; is that 20 fair? 21 A. Distance is one, yes. 22 Q. And whether or not the face was exposed or 23 visible is another factor you'd take into consideration 24 in terms of whether your witness could make an 25 identification; is that fair?</p>

<p style="text-align: right;">Page 98</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. And lighting is another factor that you take</p> <p>5 into consideration; is that fair?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: Yes, lighting would be another</p> <p>8 factor.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. And so, for example, if it was a significant</p> <p>11 distance or it was -- well, strike that. The amount of</p> <p>12 time to view the person's face, is that another factor</p> <p>13 you take into consideration in assessing whether --</p> <p>14 MR. KIVETZ: Objection. Form, speculative.</p> <p>15 MR. SWAMINATHAN: -- you're able to make an</p> <p>16 identification?</p> <p>17 THE WITNESS: Not necessarily. Some people</p> <p>18 can see a face for two seconds and make an</p> <p>19 identification. Other people can see it for five</p> <p>20 minutes and not make an identification. Nothing is</p> <p>21 etched in stone.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. And did you take into consideration whether</p> <p>24 the witness was viewing somebody who they knew or was</p> <p>25 familiar to them or versus whether they were a stranger?</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: At times, I would say, would be</p> <p>3 the best answer.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Okay. Now, as a police practices expert, were</p> <p>6 there anything about the circumstances of the Andujar</p> <p>7 shooting that would cause you to have any concerns about</p> <p>8 the ability of the witnesses to make an identification?</p> <p>9 A. No.</p> <p>10 Q. Okay. Was there anything in this case about</p> <p>11 the circumstances that would cause you to believe that</p> <p>12 those witnesses would not be able to make a reliable</p> <p>13 identification of the perpetrator?</p> <p>14 A. No, sir.</p> <p>15 Q. Did you -- were you aware when you offered</p> <p>16 your opinions in this case that the shooter's car had</p> <p>17 tinted windows?</p> <p>18 A. Yes, I read that in the reports.</p> <p>19 Q. And did you accept that as true for purposes</p> <p>20 of your opinions?</p> <p>21 A. Did I do what, sir, I'm sorry?</p> <p>22 Q. Did you accept as true the fact that shooter's</p> <p>23 car had tinted windows?</p> <p>24 A. Yes, but the description of the tinted windows</p> <p>25 was a light-tint, and they were able to see the</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. KIVETZ: Objection. Form, speculative.</p> <p>2 THE WITNESS: Well, if the person was known to</p> <p>3 them, like their next door neighbor that they'd</p> <p>4 seen, you know, every day for the past 12 years, I</p> <p>5 wouldn't even put that in the lineup. I'd show</p> <p>6 them a single photo. If it's his brother, cousin,</p> <p>7 you know, whatever, no need for a lineup.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. And would you agree with the idea that when</p> <p>10 someone's making an identification of someone familiar</p> <p>11 to them or known to them, that's a more reliable</p> <p>12 identification circumstance than when somebody is trying</p> <p>13 to identify a stranger's face?</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: Probably, but I -- I -- I</p> <p>16 wouldn't, again, say 100 percent and not etch that</p> <p>17 in stone. Sometimes they know who they are and</p> <p>18 they just don't want to identify for whatever</p> <p>19 reason they may have.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. And as a police officer, it sounds like what</p> <p>22 you're describing is your practices were different in</p> <p>23 the instances of a -- of a familiar identification</p> <p>24 procedure rather than a stranger identification</p> <p>25 procedure; is that fair?</p>	<p style="text-align: right;">Page 101</p> <p>1 individual put the -- throw the gang signs down, put a</p> <p>2 hood over his head. So they were able to see through</p> <p>3 the light tint.</p> <p>4 Q. So the idea that the windows were light-tinted</p> <p>5 as opposed to dark-tinted, that was important to you as</p> <p>6 you considered whether or not these witnesses could make</p> <p>7 identifications; is that fair?</p> <p>8 MR. KIVETZ: Objection.</p> <p>9 THE WITNESS: Yes, the -- the -- the -- being</p> <p>10 -- being that they were light tints, I mean, if</p> <p>11 they were limo tints, they wouldn't have been able</p> <p>12 to see any of the actions that took place inside</p> <p>13 the car.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Okay.</p> <p>16 A. But since they explained in their statements</p> <p>17 that they saw the -- the -- the, especially the shooter</p> <p>18 do something and they were able to count the number of</p> <p>19 individuals that were in the car, the -- the tints were</p> <p>20 sufficiently light to allow them to observe that.</p> <p>21 Q. And so ultimately, fair to say that one of</p> <p>22 your opinions in this case is that the circumstances of</p> <p>23 the shooting were such that these eyewitnesses,</p> <p>24 Mr. Rodriguez and Mr. Melendez, could make a reliable</p> <p>25 identification?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. Yes, sir. I think they -- they -- they were</p> <p>2 in the position to make that identification.</p> <p>3 Q. Okay. And tell me all the circumstances of</p> <p>4 the shooting that factored into your opinion that the</p> <p>5 witnesses could make reliable identification in this</p> <p>6 case.</p> <p>7 A. As I just explained a moment ago, they were</p> <p>8 able to see the number of individuals that were in the</p> <p>9 offending vehicle. They were able to see the actions of</p> <p>10 the shooter with the hand signs and putting up of the</p> <p>11 hoodie. They -- they viewed hundreds of photographs.</p> <p>12 They never told the detectives, I can't identify, why</p> <p>13 are you making me look at all these gang books? Those</p> <p>14 were the things that -- that led me to opine that they</p> <p>15 could make an identification.</p> <p>16 Q. Anything else?</p> <p>17 A. Not that I can think of right now, sir.</p> <p>18 Q. Did you take into consideration the general</p> <p>19 offense case report, the initial report written by the</p> <p>20 paper car, Mr. Trempe?</p> <p>21 A. I -- I read Mr. Trempe's report, yes.</p> <p>22 Q. And you read his deposition too, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And what conclusions did you draw from</p> <p>25 reviewing his report about the witness's ability to make</p>	<p style="text-align: right;">Page 104</p> <p>1 me normal?</p> <p>2 MR. KIVETZ: Yeah, I can hear you normal. And</p> <p>3 then I --</p> <p>4 MR. SWAMINATHAN: So I think -- go ahead.</p> <p>5 MR. KIVETZ: I just heard Nelson come back in,</p> <p>6 but I can't tell if he's -- can you just drop the</p> <p>7 exhibit for a second and see if it works?</p> <p>8 MR. SWAMINATHAN: Yeah. Mr. Andreu, can you</p> <p>9 just do a little test?</p> <p>10 THE WITNESS: See, I -- I can hear you, but I</p> <p>11 cannot hear Arnad [sic]. See his mouth moving, but</p> <p>12 I can't hear what he's saying.</p> <p>13 MR. SWAMINATHAN: Are you talking about me?</p> <p>14 Can you hear me now?</p> <p>15 THE WITNESS: I can hear you.</p> <p>16 MR. KIVETZ: Can you hear me now, Mr. Andreu?</p> <p>17 THE WITNESS: Now I can, yes.</p> <p>18 MR. SWAMINATHAN: Okay.</p> <p>19 THE REPORTER: I don't have a video of Mr.</p> <p>20 Andreu. Oh, there he is. Okay. Okay.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Okay. Let's try again. You can hear me now,</p> <p>23 Mr. Andreu?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. I'm showing you now a document we've</p>
<p style="text-align: right;">Page 103</p> <p>1 an identification?</p> <p>2 MR. KIVETZ: Objection. Form.</p> <p>3 THE WITNESS: I can't remember his specific</p> <p>4 testimony, but I don't remember him saying the</p> <p>5 witnesses told me they couldn't identify or</p> <p>6 anything like that.</p> <p>7 MR. SWAMINATHAN: I'm going to mark the</p> <p>8 investigative file from this case as Exhibit 2.</p> <p>9 Let me mark it first.</p> <p>10 (EXHIBIT 2 MARKED FOR IDENTIFICATION)</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. All right, sir, I'm showing you a document I</p> <p>13 marked as Exhibit 2. This is the investigative file</p> <p>14 from the Sierra case. It's Bates-stamped RFC-Sierra 1</p> <p>15 through --</p> <p>16 THE WITNESS: You --</p> <p>17 MR. SWAMINATHAN: -- just one thing, let me</p> <p>18 just identify it for you. It's RFC-Sierra 111</p> <p>19 through RFC-Sierra 178. You reviewed the</p> <p>20 investigative file from this case, correct, sir?</p> <p>21 THE WITNESS: No --</p> <p>22 MR. SWAMINATHAN: I think you're cutting out.</p> <p>23 THE WITNESS: -- I don't know if it's -- I</p> <p>24 don't know if it's my end or your end.</p> <p>25 MR. SWAMINATHAN: Jeff, are you able to hear</p>	<p style="text-align: right;">Page 105</p> <p>1 marked as Exhibit 2, identify it by Bates stamps for the</p> <p>2 record. This is the investigative file from the Andujar</p> <p>3 homicide.</p> <p>4 A. When you -- (audio cuts out) -- the document</p> <p>5 up - (audio cuts out) -- on and goes - (audio cuts out)</p> <p>6 -- end.</p> <p>7 Q. That is very unusual. I have not had this</p> <p>8 problem before.</p> <p>9 A. Yeah. See, and the video is choppy and I</p> <p>10 cannot hear it. And black --</p> <p>11 MR. SWAMINATHAN: Yeah, his video is going</p> <p>12 entirely choppy now.</p> <p>13 MR. KIVETZ: Yeah. Seems like it's every time</p> <p>14 you throw up --</p> <p>15 THE REPORTER: Would you like to go off the</p> <p>16 record and see if we can figure it out real quick?</p> <p>17 MR. SWAMINATHAN: Yeah.</p> <p>18 MR. KIVETZ: Yep.</p> <p>19 THE REPORTER: Okay. We're off the record.</p> <p>20 The time is 12:08.</p> <p>21 (OFF THE RECORD)</p> <p>22 THE REPORTER: We are back on the record for</p> <p>23 the deposition of Nelson Andreu being conducted by</p> <p>24 videoconference. My name is Sydney Little. Today</p> <p>25 is May 12th, 2023, and the time is 12:19 p.m.</p>



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1 Central.

2 BY MR. SWAMINATHAN:

3 Q. Okay, sir. We are looking at Exhibit 2, which

4 is the Sierra investigative file.

5 A. Okay.

6 Q. I'd like you to take a look at Page RFC-Sierra

7 159, which is the General Offense Case Report. Let me

8 know when you're there, please.

9 A. Okay. 150 -- okay, 159.

10 Q. Yeah. Thank you. You see that document, the

11 General Offense Case Report?

12 A. It says "General Offense Case Report." Yes.

13 Q. Yes. And you understood, when you reviewed

14 these reports, that this is the original report filled

15 out by the patrol officer who arrives at the scene,

16 correct?

17 A. Yes.

18 Q. Okay. And this was prepared by Mr. Trempe,

19 who you indicated that you had reviewed his deposition,

20 correct?

21 A. Yes.

22 Q. Okay. And in this General Offense Case

23 Report, there is a section in which the offender's

24 descriptions are provided, correct?

25 A. Yes, I believe so.

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1 Q. Okay. In the middle section where it lists

2 offender's name or describe clothing, et cetera, it

3 indicates number 1 and number 2, and it lists NFD. Do

4 you see that?

5 A. Yes.

6 Q. And what does NFD stand for?

7 A. I believe, no further description.

8 Q. Okay. And so in that section, the only

9 information that was provided by Mr. Melendez and

10 Mr. Rodriguez to Mr. Trempe was that it was a male,

11 white Hispanic, were the -- were perpetrators 1 and 2;

12 is that correct?

13 A. That's what I believe it says there, yes.

14 Q. Okay. And then it says that the third person

15 in the offender's vehicle, down in the section below, it

16 indicates was a male, Black, correct?

17 A. Yes. It -- actually in the narrative portion.

18 Okay.

19 Q. Yes. And it says "M/1," which you understood

20 to mean that offender number 3 was described by

21 Mr. Melendez and Mr. Rodriguez as a male Black, correct?

22 A. Yes.

23 Q. Okay. And the description that Mr. Melendez

24 and Mr. Rodriguez were able to provide to Mr. Trempe was

25 no further description, correct?

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1 A. Yes.

2 MR. KIVETZ: Objection to form.

3 BY MR. SWAMINATHAN:

4 Q. So you understood that when Mr. Trempe

5 interviewed Mr. Melendez and Mr. Rodriguez at the scene,

6 other than identifying that the individuals were males

7 and that they were white Hispanics and Black, there was

8 no further description that they were able to provide to

9 the scene officer. Did you understand that when you

10 offered your opinions?

11 MR. KIVETZ: Objection. Form.

12 THE WITNESS: I don't know if it was that they

13 could not offer additional -- they just didn't

14 provide Officer Trempe with any additional

15 information.

16 BY MR. SWAMINATHAN:

17 Q. And what was your understanding when you

18 offered your opinion in this case about whether Mr.

19 Trempe asked them for additional description of

20 information?

21 MR. KIVETZ: Objection to form.

22 THE WITNESS: Say that again, please?

23 BY MR. SWAMINATHAN:

24 Q. Yeah. What was your understanding when you

25 offered your opinions in this case about whether Mr.

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1 Trempe asked them for additional descriptive

2 information?

3 MR. KIVETZ: Objection to form.

4 THE WITNESS: I don't remember, in -- in his

5 deposition if -- if he said that he had asked them

6 for additional descriptors or not, but in any --

7 BY MR. SWAMINATHAN:

8 Q. Would it matter -- I'm sorry. Go ahead.

9 Sorry.

10 A. In -- in any event, like I -- I outlined in my

11 report, or explained in my report, I -- I would not

12 expect the uniformed officer on one of my cases to get

13 detailed information on -- on the suspects in the case.

14 That's for detectives to do subsequent to their -- their

15 being out -- off the scene and in the homicide office.

16 So to put that they were Latin males and no other

17 description and a -- a Black male and no other

18 description doesn't surprise me.

19 Q. So your practice was to deliberately have

20 patrol officers not learn descriptive information from

21 eyewitnesses at a scene; is that correct?

22 A. No, I --

23 MR. KIVETZ: Objection. Form. Foundation.

24 Misstates his testimony.

25 THE WITNESS: I -- I didn't say deliberately.

<p style="text-align: right;">Page 110</p> <p>1 I just said that they get the -- the -- the minimal</p> <p>2 information that they need to complete their</p> <p>3 report. I had people going on murder scenes and</p> <p>4 they were so -- the uniformed cop was so determined</p> <p>5 to get the victim's name that he is pulling a</p> <p>6 wallet out of his -- that dead guy's pocket to get</p> <p>7 his name from his driver's license.</p> <p>8 I didn't want them doing that. Document what</p> <p>9 you have and whatever the witnesses tell you, but</p> <p>10 don't go questioning them. That's a detective's</p> <p>11 role.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. How long after Mr. Trempe arrived at the scene</p> <p>14 did the detectives arrive at the scene?</p> <p>15 MR. KIVETZ: Objection to form.</p> <p>16 THE WITNESS: It wasn't a long -- from what --</p> <p>17 from what I remember, it was not a long time.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Do you have any idea?</p> <p>20 A. Again, I -- I could go back and review it, but</p> <p>21 I would say within -- well within an hour, half hour.</p> <p>22 Q. And so in this case, the perpetrators fled,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Would it be valuable to get descriptive</p>	<p style="text-align: right;">Page 112</p> <p>1 descriptive information as he could from the</p> <p>2 eyewitnesses about the descriptions of the perpetrators,</p> <p>3 would that have any impact on your opinions in this</p> <p>4 case?</p> <p>5 MR. KIVETZ: Objection to form.</p> <p>6 THE WITNESS: No, not -- not necessarily.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. I'm not asking whether not -- necessarily or</p> <p>9 not. They did do -- does it have it -- would it have</p> <p>10 any impact on your opinions? Yes or no?</p> <p>11 A. No.</p> <p>12 MR. KIVETZ: Objection to form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Okay. And so is it fair to say, for purposes</p> <p>16 of your opinions, you did not consider the idea that</p> <p>17 Mr. Trempe had asked for as much descriptive information</p> <p>18 as he could, and that what's contained in the General</p> <p>19 Offense Case Report is as much information as the</p> <p>20 witnesses were able to provide; is that fair?</p> <p>21 MR. KIVETZ: Objection. Form. Misstates his</p> <p>22 testimony.</p> <p>23 THE WITNESS: Well, I don't know if -- Trempe</p> <p>24 may say that he -- he -- he attempts to get as much</p> <p>25 information as he can. Doesn't specify that --</p>
<p style="text-align: right;">Page 111</p> <p>1 information to try to see if you could catch the</p> <p>2 perpetrators?</p> <p>3 MR. KIVETZ: Objection to form.</p> <p>4 THE WITNESS: The description -- the</p> <p>5 description of the vehicle -- again, if they</p> <p>6 would've said they're -- they're 20 --</p> <p>7 approximately 23 years old and they have black</p> <p>8 hair, wearing shorts and a white T-shirt, that's</p> <p>9 probably half the population in Chicago, so I don't</p> <p>10 know if that would be sufficient.</p> <p>11 If he -- if he was wearing a -- a Mickey Mouse</p> <p>12 outfit, well, then that would narrow it down. I'm</p> <p>13 just giving examples. But to put out the</p> <p>14 description of the car occupied by three males, I</p> <p>15 believe, is sufficient information for the other</p> <p>16 officers to be on the lookout for -- for this</p> <p>17 vehicle and these occupants.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. And if Mr. Trempe testified that it was his</p> <p>20 practice to collect as much descriptive information as</p> <p>21 he could from the witnesses, do you discredit that</p> <p>22 testimony?</p> <p>23 A. No, I wouldn't discredit his testimony.</p> <p>24 Q. And if Mr. Trempe testified that he would</p> <p>25 deliberately make it a point to gather as much</p>	<p style="text-align: right;">Page 113</p> <p>1 that's what happened in this case. Also, you have</p> <p>2 to take into account these witnesses just</p> <p>3 experienced a -- a traumatic event.</p> <p>4 And how much do they give the officer at this</p> <p>5 time? Again, sometimes gangs want to retaliate.</p> <p>6 So there's -- there's several things that could go</p> <p>7 into why this is the only description in Officer</p> <p>8 Trempe's report.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. And ultimately, the fact that -- strike</p> <p>11 that. Ultimately, the fact that the only description</p> <p>12 that's provided in the General Offense Case Report for</p> <p>13 Mr. Trempe is that the offenders were male white</p> <p>14 Hispanics and a male Black with no further description</p> <p>15 was not relevant, from your perspective, in offering</p> <p>16 your opinions in this case; is that fair?</p> <p>17 MR. KIVETZ: Objection. Misstates his</p> <p>18 testimony.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. You said -- is that is that is that fair or</p> <p>22 not?</p> <p>23 MR. KIVETZ: He said no.</p> <p>24 THE WITNESS: I said no.</p> <p>25 BY MR. SWAMINATHAN:</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. And so it was relevant to you?</p> <p>2 A. I said no. No, sir.</p> <p>3 Q. I think that's why we're getting confused. Was</p> <p>4 it relevant to you that no further description was</p> <p>5 provided by these witnesses in the General Offense Case</p> <p>6 Report?</p> <p>7 MR. KIVETZ: Objection. Form. I'm confused.</p> <p>8 Like, I don't know what you're asking. I don't</p> <p>9 know what you're asking.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Go ahead, Mr. Andreu. Okay. I think we were</p> <p>12 maybe talking past each other. Was it relevant to you?</p> <p>13 A. No.</p> <p>14 Q. Okay. Thank you. Let's look at --</p> <p>15 MR. KIVETZ: I'm just going to object to the</p> <p>16 form of the last question.</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. Let's take a look at the -- your list of</p> <p>19 materials reviewed in your report, beginning at the</p> <p>20 bottom of Page 3.</p> <p>21 A. Okay.</p> <p>22 Q. Looking through your list of materials</p> <p>23 reviewed from the bottom of Page 3 through Page 5, are</p> <p>24 there any items missing from your list of materials</p> <p>25 reviewed?</p>	<p style="text-align: right;">Page 116</p> <p>1 in your materials reviewed?</p> <p>2 A. That is correct.</p> <p>3 Q. Is there anything else that you reviewed as a</p> <p>4 reference or otherwise for purposes of offering your</p> <p>5 opinions in this case?</p> <p>6 A. No, sir. I don't believe so. This is the</p> <p>7 entirety of the list.</p> <p>8 Q. Okay. And so is your report, when you drafted</p> <p>9 it, was it based on the things listed in this list of</p> <p>10 materials reviewed?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Was it based on anything else?</p> <p>13 A. Oh, based on my experience, training, and</p> <p>14 education, but as far as documents, just these.</p> <p>15 Q. Okay. And so your report does not list, in</p> <p>16 your materials reviewed, any national standards or other</p> <p>17 policing standards, correct?</p> <p>18 A. No, sir. I was not --</p> <p>19 Q. And you don't -- I'm sorry.</p> <p>20 MR. KIVETZ: Let me finish.</p> <p>21 THE WITNESS: I was not asked to opine on --</p> <p>22 on those.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. And you said you were not -- you were</p> <p>25 not asked to opine on any national policing standards;</p>
<p style="text-align: right;">Page 115</p> <p>1 A. No, sir. I -- I believe -- I believe that's</p> <p>2 an accurate list of what I reviewed.</p> <p>3 Q. Is there anything that you reviewed in</p> <p>4 offering your opinions in this case that's not included</p> <p>5 in this list?</p> <p>6 A. The -- I -- I -- you're asking me to go</p> <p>7 through a list and remember what I read months ago. I</p> <p>8 believe that when I compiled this list, it was an</p> <p>9 accurate list of what I -- but, you know, I -- I</p> <p>10 wouldn't put my head in a guillotine and say that, but I</p> <p>11 believe it to be.</p> <p>12 Q. Okay. In other words, when you look at this</p> <p>13 list, you don't -- you can't think of something that you</p> <p>14 think you reviewed that's not listed here; is that fair?</p> <p>15 A. I -- I don't believe so, yes.</p> <p>16 Q. Okay. And is there anything that you reviewed</p> <p>17 that was new, after offering this report and before this</p> <p>18 deposition?</p> <p>19 A. Ask that question again, please?</p> <p>20 Q. Yeah. Did you review anything additional</p> <p>21 after creating this report, relevant to this case?</p> <p>22 A. No. I don't -- I didn't receive any other</p> <p>23 information.</p> <p>24 Q. Okay. And is it fair to say that your</p> <p>25 opinions are based on this set of reports that's listed</p>	<p style="text-align: right;">Page 117</p> <p>1 is that fair?</p> <p>2 MR. KIVETZ: Objection. Form.</p> <p>3 THE WITNESS: That is correct.</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. Okay. And you didn't consult any national</p> <p>6 policing standards in offering your opinions, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. And in your report, you don't cite to any</p> <p>9 national policing standards, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. Okay. And that's because you, in offering</p> <p>12 your opinions, were not intending to offer opinions</p> <p>13 about national policing standards; is that fair?</p> <p>14 MR. KIVETZ: Objection. Form. Misstates</p> <p>15 his --</p> <p>16 THE WITNESS: No, not necessarily. I know</p> <p>17 police standards, both national and -- and local.</p> <p>18 I don't know a lot about the -- the ones in</p> <p>19 Chicago, but the national standards, I'm -- I'm</p> <p>20 familiar with. I don't have to cite -- I didn't</p> <p>21 feel I had to cite them in my report.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Okay. And then you didn't review any of them</p> <p>24 or -- in preparing your report; is that fair?</p> <p>25 A. I -- I may have. I -- I don't remember right</p>

<p style="text-align: right;">Page 118</p> <p>1 now. If I had any questions, I may have gone to the</p> <p>2 IACP website or something, but again, I can't tell you</p> <p>3 100 percent.</p> <p>4 Q. You didn't list any IACP materials in your</p> <p>5 list of materials reviewed, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And you don't have any memory of consulting</p> <p>8 the IACP in preparing your Sierra Expert Report; is that</p> <p>9 fair?</p> <p>10 A. I don't have any memory. It doesn't mean that</p> <p>11 I did not. I just don't remember at this time.</p> <p>12 Q. Looking at your list of materials reviewed,</p> <p>13 did you receive any materials related to Mr. Sierra</p> <p>14 receiving a Certificate of Innocence?</p> <p>15 A. I believe that's included in there somewhere,</p> <p>16 maybe one of the -- the court hearings or something, but</p> <p>17 in any event, I -- I know that he did receive that.</p> <p>18 Q. Did it have any impact on your opinion?</p> <p>19 A. No, sir.</p> <p>20 Q. The conclusions of Judge Reddick, you saw</p> <p>21 those in your materials, correct?</p> <p>22 MR. KIVETZ: Objection. Form. Foundation.</p> <p>23 THE WITNESS: Yes, sir.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. And so you were aware of her findings based on</p>	<p style="text-align: right;">Page 120</p> <p>1 THE WITNESS: Yeah. I -- I'm not here to</p> <p>2 agree or disagree. I just offered opinion on the</p> <p>3 investigation. The judge is -- is welcome to his</p> <p>4 or her opinion. I don't know if she's a man or a</p> <p>5 woman.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. And actually in this case, you're not offering</p> <p>8 an opinion about whether or not misconduct occurred; is</p> <p>9 that fair?</p> <p>10 A. Whether the misconduct occurred? No, I'm not</p> <p>11 offering an opinion on that.</p> <p>12 Q. Okay. All you're doing is saying that if you</p> <p>13 accept the version of events that is told in the police</p> <p>14 reports and the handwritten statement, that would be</p> <p>15 consistent with accepted police practices; is that fair?</p> <p>16 A. Basically, yes, sir.</p> <p>17 Q. Okay. Go down to the deposition section, if</p> <p>18 you don't mind, sir.</p> <p>19 A. Where -- where do you want me to go, sir?</p> <p>20 Q. In your expert report on Page 4 in your list</p> <p>21 of materials reviewed.</p> <p>22 A. Okay.</p> <p>23 Q. There's a depositions section. Do you see</p> <p>24 that? And you list a bunch of depositions?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 119</p> <p>1 the Certificate of Innocence hearing that she conducted,</p> <p>2 correct?</p> <p>3 MR. KIVETZ: Objection. Form.</p> <p>4 THE WITNESS: Yes, sir. I remember reading</p> <p>5 that.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Did that have any impact on your opinions?</p> <p>8 A. No, sir.</p> <p>9 Q. Did you -- would you agree that Ms. -- that</p> <p>10 Judge Reddick found that, in fact, there had been</p> <p>11 misconduct that occurred in -- in our homicide</p> <p>12 investigation?</p> <p>13 MR. KIVETZ: Objection to form. Foundation.</p> <p>14 THE WITNESS: Ask that question again, please?</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. In -- you agree that in reviewing Judge</p> <p>17 Reddick's conclusions after the Certificate of Innocence</p> <p>18 hearing, that she did conclude that there had been</p> <p>19 police misconduct in the investigation?</p> <p>20 MR. KIVETZ: Objection. Form. Foundation.</p> <p>21 THE WITNESS: She did write that in her -- in</p> <p>22 her findings, or her report, or whatever.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Do you disagree with Judge Reddick's findings?</p> <p>25 MR. KIVETZ: Objection. Form.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Okay. Thank you. The fourth item on there is</p> <p>2 the Ron Malczyk deposition, including exhibits. Do you</p> <p>3 see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. You reviewed Mr. Malczyk's deposition, yes?</p> <p>6 A. I did.</p> <p>7 Q. Okay. Did you review it in its entirety?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you find it notable, memorable?</p> <p>10 A. Sir, I -- I don't remember the details of --</p> <p>11 of his deposition. I would have to go back and -- and</p> <p>12 read it again. Like -- like, there's many -- many on</p> <p>13 that list. I don't want to confuse one name with</p> <p>14 another.</p> <p>15 Q. Is it fair to say that you -- in your report,</p> <p>16 you don't discuss the deposition testimony of</p> <p>17 Mr. Malczyk at all, correct?</p> <p>18 A. I don't believe so, no, sir.</p> <p>19 Q. Okay. And you -- and you know that</p> <p>20 Mr. Malczyk was the police officer who was at the scene</p> <p>21 of the Ruben Gonzalez murder, correct?</p> <p>22 MR. KIVETZ: Objection. Form. Foundation.</p> <p>23 THE WITNESS: I -- I -- I can't remember those</p> <p>24 details, but if you are -- if you're telling me so,</p> <p>25 then I have no reason to doubt you.</p>

<p style="text-align: right;">Page 122</p> <p>1 MR. KIVETZ: Well, and also, Anand, you know,</p> <p>2 we're not offering any opinions on the Ruben</p> <p>3 Gonzalez matter. It's right on Page 2 [sic] of his</p> <p>4 report.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Yeah. And Mr. Andreu, so let's just be --</p> <p>7 let's make sure we got it clear on the record from you.</p> <p>8 You're not offering any opinions about the Ruben</p> <p>9 Gonzalez homicide investigation, correct?</p> <p>10 A. No, sir.</p> <p>11 Q. And you understand, however, that there was</p> <p>12 information that was purportedly learned during the</p> <p>13 Ruben Gonzalez deposition that was relevant in the</p> <p>14 Andujar homicide investigation, correct?</p> <p>15 A. Yes. And I -- I -- I can remember the</p> <p>16 visiting of the detectives to Gonzalez' mother, which</p> <p>17 led to some vital information on the Andujar case.</p> <p>18 Q. Okay. And so ultimately, there was</p> <p>19 information that was purportedly learned in the Gonzalez</p> <p>20 investigation that led to Mr. Sierra becoming a suspect</p> <p>21 in the Andujar case, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And that information had to do, in part, with</p> <p>24 information about a description of a particular vehicle,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 124</p> <p>1 murder investigation, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And in that section, you do -- you</p> <p>4 agree with me, you do not discuss the testimony of the</p> <p>5 police officer in that case, Mr. Malczyk, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Why didn't you discuss the testimony of</p> <p>8 Mr. Malczyk?</p> <p>9 A. All I was doing was laying, like, a foundation</p> <p>10 of what had happened in the Ruben Gonzalez murder, the -</p> <p>11 - the location, the time, the date, to show proximity to</p> <p>12 the Andujar case, and -- and the -- and a possible</p> <p>13 connection, but I -- I didn't provide you with details.</p> <p>14 Q. Okay. Do you -- and ultimately, because you</p> <p>15 were not offering opinions about the Ruben Gonzalez</p> <p>16 case, correct?</p> <p>17 A. Exactly.</p> <p>18 Q. Okay. Do you have a copy of Mr. Tiderington's</p> <p>19 expert report?</p> <p>20 A. I do.</p> <p>21 Q. Can you get that in front of you? Let me know</p> <p>22 when you have that.</p> <p>23 A. Okay. I have it.</p> <p>24 MR. KIVETZ: Oh, hold on. I need a second.</p> <p>25 Okay.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And did you look at the information in</p> <p>3 the Gonzalez file about the vehicle that had been</p> <p>4 described as being involved?</p> <p>5 A. I don't --</p> <p>6 MR. KIVETZ: Objection to form and foundation.</p> <p>7 THE WITNESS: I don't know what information I</p> <p>8 received on the Gonzalez files and -- and -- file</p> <p>9 and what it -- what it said or didn't say. I just</p> <p>10 don't remember at this point.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. You -- in your list of materials reviewed, you</p> <p>13 agree with me, you list the Ruben Gonzalez homicide</p> <p>14 investigative file and permanent retention file,</p> <p>15 correct?</p> <p>16 A. Yeah. Yes, you're right. I did review. What</p> <p>17 I'm saying is I -- I can't remember now, specifically,</p> <p>18 the details of it.</p> <p>19 Q. Okay. And if you look at Page 5 of your</p> <p>20 report --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- you discuss the Ruben Gonzalez murder</p> <p>23 investigation, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you provide a general summary of that</p>	<p style="text-align: right;">Page 125</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. If you look at that report and go to</p> <p>3 Page 30 of that report -- Mr. Tiderington's report?</p> <p>4 A. Okay.</p> <p>5 Q. Okay. And on that -- in that -- in Mr.</p> <p>6 Tiderington's report, he offers some opinions on Pages</p> <p>7 30 through 33 about what occurred during the Ruben</p> <p>8 Gonzalez homicide investigation, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you're not offering any opinions in</p> <p>11 response to Mr. Tiderington's discussion of the Ruben</p> <p>12 Gonzalez investigation; is that fair?</p> <p>13 MR. KIVETZ: Objection. Form.</p> <p>14 THE WITNESS: That's fair. I was not</p> <p>15 requested to opine on that, and I did not.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Okay. And so the opinions Mr. Tiderington</p> <p>18 offers on Pages 30 through 33 of his report, you're not</p> <p>19 responding or disagreeing with those; is that fair?</p> <p>20 MR. KIVETZ: Objection.</p> <p>21 THE WITNESS: Neither -- neither agreeing or</p> <p>22 disagreeing, no.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. Thank you. And if you look on Page 31</p> <p>25 of his report -- this is probably the easiest way to do</p>



<p style="text-align: right;">Page 126</p> <p>1 it since we can't show on the screen. Let's use his</p> <p>2 report. If you look on Page 31 of his report --</p> <p>3 A. Yes, sir.</p> <p>4 Q. You -- when you offered your report in this</p> <p>5 case, you obviously reviewed Mr. Tiderington's report,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in fact, you were -- the purpose of this -</p> <p>9 - respond to some of the opinions of Mr. Tiderington,</p> <p>10 correct?</p> <p>11 A. Right.</p> <p>12 Q. Okay. And just, by the way, to be clear,</p> <p>13 Mr. Tiderington has a number of opinions about Chicago</p> <p>14 Police Department policies and practices. You're not</p> <p>15 offering any opinions about that, correct?</p> <p>16 A. Yes, sir, correct.</p> <p>17 MR. KIVETZ: Wait a minute. I just -- what</p> <p>18 page are you on?</p> <p>19 MR. SWAMINATHAN: I -- I'm just ask -- I'm</p> <p>20 asking him just general question, not about the</p> <p>21 report.</p> <p>22 MR. KIVETZ: Okay.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. And Mr. Tiderington, when you reviewed his</p> <p>25 report, had a number of opinions, for example, about the</p>	<p style="text-align: right;">Page 128</p> <p>1 you were in homicide, when you were -- strike that.</p> <p>2 As a matter of your practices when you were an</p> <p>3 investigator, you turned over all of the police reports</p> <p>4 in your file to the prosecutor; is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you would never pick and choose</p> <p>7 which police reports or police documents to share; is</p> <p>8 that correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. And I think, as you've now indicated,</p> <p>11 your opinions here are focused on responding to</p> <p>12 Mr. Tiderington, specifically with regard to the</p> <p>13 investigation that was conducted in the Andujar case,</p> <p>14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And are there any opinions that</p> <p>17 Mr. Tiderington had with regard to how the Andujar</p> <p>18 investigation was conducted that you agree with?</p> <p>19 MR. KIVETZ: Objection to form.</p> <p>20 THE WITNESS: Again, I'd have to go through</p> <p>21 the whole report, but I -- I can't name anything</p> <p>22 right now. I -- I can say that what he talks about</p> <p>23 -- the misconduct, if that misconduct, in fact,</p> <p>24 took place, that would not be a correct way to</p> <p>25 conduct an investigation.</p>
<p style="text-align: right;">Page 127</p> <p>1 Special Order 83-1 and the subsequent Special Orders</p> <p>2 related to investigative files and street files. You saw</p> <p>3 that in his report, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you're not offering any opinions about</p> <p>6 those Special Orders, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And Mr. Tiderington had some opinions about</p> <p>9 information that should have been documented and</p> <p>10 disclosed in the Andujar homicide investigation. You're</p> <p>11 not offering any opinions about what was disclosed or</p> <p>12 not disclosed, correct?</p> <p>13 THE WITNESS: Well --</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: Ask that question again. I'm</p> <p>16 sorry, sir.</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. Yeah. You're not offering any opinions about</p> <p>19 what information was disclosed or not disclosed to</p> <p>20 prosecutors in the criminal defense in the Andujar</p> <p>21 homicide investigation, correct?</p> <p>22 MR. KIVETZ: Objection to form.</p> <p>23 THE WITNESS: Correct -- that is correct.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. Okay. And as a matter of your practices when</p>	<p style="text-align: right;">Page 129</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay.</p> <p>3 A. But again, I'm not giving any opinion on that.</p> <p>4 Q. Okay. And so if I understand you correctly,</p> <p>5 one of the things Mr. Tiderington does in his report is</p> <p>6 he discusses some of the evidence that was contained in</p> <p>7 the record that makes accusations of misconduct by</p> <p>8 police officers, correct?</p> <p>9 A. Yes. I've read that. Correct.</p> <p>10 Q. And one of the things he does is he opines</p> <p>11 that if that misconduct that was described by various</p> <p>12 witnesses, in fact, occurred, that would be a violation</p> <p>13 of generally accepted police practices, correct?</p> <p>14 MR. KIVETZ: Objection to form. Assuming a</p> <p>15 jury credits it, but yes.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Go ahead.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And you agree with him that those</p> <p>20 things that are described would be deviations from</p> <p>21 generally accepted police practices if they, in fact,</p> <p>22 occurred, correct?</p> <p>23 MR. KIVETZ: Objection. Form. Again,</p> <p>24 assuming a jury credits it. Go ahead.</p> <p>25 THE WITNESS: Yes, sir.</p>

<p style="text-align: right;">Page 130</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. And if you look, for example, at Page</p> <p>3 23 of his report -- tell me when you're there, sir.</p> <p>4 A. Okay, 23. I'm here.</p> <p>5 Q. Yep. Okay. And in around the middle of the</p> <p>6 page, he has a sections -- he has a section -- well, he</p> <p>7 has -- there's two bullet points on that page -- on</p> <p>8 Page 23. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And in those bullet points, he discusses IACP</p> <p>11 policy documents and American Judicature Society</p> <p>12 information. Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And his discussion there, he's basically</p> <p>15 talking about various national policing standards that</p> <p>16 indicate that even by 1995, there was an understanding</p> <p>17 within the world of policing about some of the</p> <p>18 challenges related to eyewitness identifications. Do</p> <p>19 you agree?</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: That's what he wrote in his</p> <p>22 report, yes.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Do you -- and you didn't say anything in your</p> <p>25 report disputing or challenging that; is that fair?</p>	<p style="text-align: right;">Page 132</p> <p>1 Unfortunately, civilian eyewitnesses frequently prove to</p> <p>2 be unreliable observers and erroneous identifications</p> <p>3 are often the result. Misidentification by our" --</p> <p>4 "eyewitnesses are normally the result of a combination</p> <p>5 of factors." That's a citation that he provided</p> <p>6 directly from the IACP policy center documents, correct?</p> <p>7 MR. KIVETZ: Objection to form.</p> <p>8 THE WITNESS: Yes. I see it's in quotation,</p> <p>9 so I'm assuming that that is directly from there.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Okay. And you don't disagree with that</p> <p>12 statement from the policy documents of the IACP,</p> <p>13 correct?</p> <p>14 MR. KIVETZ: Objection. Form. Misstates his</p> <p>15 previous testimony.</p> <p>16 THE WITNESS: I agree with police frequently</p> <p>17 rely on eyewitness information. Frequently proved</p> <p>18 to be unreliable observers, I'm not too sure about.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Okay. When you read this portion of</p> <p>21 Mr. Tiderington's report, you did not decide that you</p> <p>22 felt that you needed to offer a counter-opinion on his</p> <p>23 discussion of the IACP's policy documents, correct?</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 THE WITNESS: No, sir.</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: I don't believe I did. No, sir.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Okay. And so you're not disagreeing with</p> <p>5 Mr. Tiderington about the idea that even by 1995, the</p> <p>6 challenges associated with eyewitness identifications</p> <p>7 were known in the world of policing; is that fair?</p> <p>8 MR. KIVETZ: Objection. Form.</p> <p>9 THE WITNESS: I'm agreeing or -- what he wrote</p> <p>10 in his report, yes.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Okay. And so his citation to the IACP</p> <p>13 policies and some Supreme Court standards in his report,</p> <p>14 you're not disagreeing with those opinions; is that</p> <p>15 fair?</p> <p>16 MR. KIVETZ: Objection to form.</p> <p>17 THE WITNESS: No, sir. I mean, I didn't go to</p> <p>18 his -- to his footnotes and open up the IACP</p> <p>19 information. I -- I'm -- I'm hopeful that what he</p> <p>20 wrote there is -- is what's listed in IACP, but I</p> <p>21 didn't check it out. No.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Okay. But he writes on there -- I mean, you</p> <p>24 saw in his report where he quoted from it. "Police</p> <p>25 frequently rely on eyewitness identifications.</p>	<p style="text-align: right;">Page 133</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. Why not?</p> <p>3 A. I can't tell you what was going on in my mind</p> <p>4 at the time. I just didn't.</p> <p>5 Q. But you didn't find anything that</p> <p>6 Mr. Tiderington had written about what was contained in</p> <p>7 the IACP policy documents from 1992 and 1993 to be false</p> <p>8 or inaccurate; is that fair?</p> <p>9 MR. KIVETZ: Objection. Form.</p> <p>10 THE WITNESS: Again, I didn't --</p> <p>11 MS. BARBER: Misstates testimony.</p> <p>12 THE WITNESS: I didn't go back and -- and --</p> <p>13 and check the footnotes that he wrote in his</p> <p>14 report, but I -- I believe that what he put in</p> <p>15 there is accurate. I mean, it'd have to be, it was</p> <p>16 what's in his report.</p> <p>17 BY MR. SWAMINATHAN:</p> <p>18 Q. Okay. And so you don't dispute that in 1992</p> <p>19 and 1993, the IACP had papers stating that civilian</p> <p>20 eyewitness frequently proved to be unreliable observers;</p> <p>21 is that fair?</p> <p>22 MR. KIVETZ: Objection. Form.</p> <p>23 THE WITNESS: What he wrote there is -- is</p> <p>24 from the IACP. My -- my experience in -- in</p> <p>25 homicide, I don't remember ever having a case,</p>

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1 ever, where a witness identified a suspect and --  
2 and the person was convicted and later on it was  
3 proven that the eyewitness identification was not -  
4 - not true, that he -- he made -- he or she made a  
5 mistake. That never happened in any of my cases.

6 BY MR. SWAMINATHAN:

7 Q. Have you ever had a case that you investigated  
8 and resulted in a conviction in which the conviction was  
9 later thrown out?

10 A. No, sir.

11 Q. Have you -- do you know any officer who worked  
12 with you ever in Miami who had even five instances of  
13 cases that they worked on, having the convictions thrown  
14 out?

15 A. I can't answer that.

16 MR. KIVETZ: Objection to form.

17 THE WITNESS: I can't answer that. I don't  
18 know everybody that worked in homicide that -- you  
19 know, what happened in their cases.

20 BY MR. SWAMINATHAN:

21 Q. Oh, thank you. I'm not asking you about  
22 things you don't know. I'm asking you only about what  
23 you do know. So let me ask it again. Are you aware of  
24 a single investigator from Miami who had multiple  
25 instances in which an investigation they conducted

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1 resulted in convictions being thrown out?

2 MR. KIVETZ: Objection. Form. You're saying  
3 now, outside of a lineup, because I think that's  
4 where I'm confused.

5 MR. SWAMINATHAN: I'm asking -- yeah. I'm  
6 asking about anything.

7 MR. KIVETZ: Okay.

8 THE WITNESS: No, I -- I can't recall any  
9 case.

10 BY MR. SWAMINATHAN:

11 Q. Can you recall a single detective or  
12 investigator that you worked with whose cases resulted  
13 in multiple convictions being thrown out?

14 MR. KIVETZ: Objection. Form. Foundation.

15 THE WITNESS: No, sir, I cannot.

16 BY MR. SWAMINATHAN:

17 Q. Okay. If you go to Page 30 of  
18 Mr. Tiderington's report?

19 A. 30?

20 Q. 30, yeah, Page 30. Thank you.

21 A. Okay.

22 Q. He has a discussion there, obviously, with the  
23 Ruben Gonzalez investigation. We talked about that. If  
24 you look at Page 31 of his report.

25 A. Okay.

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1 Q. He has a section where he has cut and paste  
2 [sic] in a portion of the police report from the  
3 Gonzalez case. Do you see that?

4 A. Yes, sir.

5 Q. Okay. And what he's citing there is to  
6 Detective Voitowich and Graf's interview of Malczyk at  
7 the scene. Do you see that?

8 A. Yes, sir.

9 Q. And that was among the documents that you  
10 reviewed, correct?

11 A. Correct.

12 Q. Okay.

13 MS. BARBER: Sorry.

14 BY MR. SWAMINATHAN:

15 Q. And then what --

16 MS. BARBER: Sorry. What page?

17 MR. KIVETZ: 31.

18 MR. SWAMINATHAN: This is Page 31 of the  
19 Tiderington report.

20 MS. BARBER: Thank you.

21 MR. SWAMINATHAN: Yeah.

22 BY MR. SWAMINATHAN:

23 Q. Okay. And on Page 32 of the report, he then  
24 cites to a separate police report that discusses an  
25 interview of Mr. Malczyk. Do you see that?

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1 A. Okay.

2 Q. Right? And so what he basically discusses on  
3 Page 31 and 32 are two different reports in the Gonzalez  
4 investigation, one written by Voitowich and Graf about  
5 their conversation with Mr. Malczyk, and then a later  
6 one written by Detective Guevara and Halvorsen about  
7 their conversation with Mr. Malczyk. Do you see that?

8 MR. KIVETZ: Objection. Form. Take your time  
9 if you need to read, review it.

10 BY MR. SWAMINATHAN:

11 Q. Yeah. Take as much time as you need.

12 A. Okay.

13 Q. Okay. And when you reviewed Mr. Tiderington's  
14 report, you understood that one of the things he was  
15 pointing out was that there's a significant  
16 contradiction between the Voitowich and Graf report and  
17 the Guevara-Halvorsen report, correct?

18 MR. KIVETZ: Objection to form.

19 THE WITNESS: There is difference.

20 BY MR. SWAMINATHAN:

21 Q. Okay. And the key difference is that in one  
22 report, Mr. Malczyk had told Voitowich and Graf that the  
23 Imperial Gangsters in the silver car drove away without  
24 providing any information. And in the Guevara-  
25 Halvorsen report, Mr. Malczyk purportedly told them that

<p style="text-align: right;">Page 138</p> <p>1 he did get information from the two Imperial Gangsters;  2 is that fair?  3 A. Yes, sir.  4 MR. KIVETZ: Objection. Form.  5 BY MR. SWAMINATHAN:  6 Q. Do you have any explanation for that  7 contradiction?  8 MR. KIVETZ: Objection. Form. Foundation.  9 Speculative.  10 THE WITNESS: No, sir. I do not.  11 BY MR. SWAMINATHAN:  12 Q. Are you aware of any evidence about which of  13 those two versions is correct?  14 MR. KIVETZ: Objection. Form. Foundation.  15 Speculative.  16 THE WITNESS: No, sir. I do not.  17 BY MR. SWAMINATHAN:  18 Q. And do you have -- strike that. Mr. Malczyk,  19 you said you had a copy of his deposition, correct?  20 A. Yes.  21 Q. And in fact, Mr. Tiderington also cited  22 specifically to the deposition of Ron Malczyk in  23 Footnote 19, you see that?  24 A. Yes  25 Q. And --</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay. And are you intending in this  2 deposition to offer new or different opinions?  3 A. No, sir.  4 Q. Okay. And if you look at that second to last  5 bullet point in Mr. Tiderington's report, I mean, you  6 reviewed this entire section of Mr. Tiderington's report  7 when you offered your opinions, correct?  8 A. Yes.  9 Q. Okay. And on that second-to-last bullet  10 point, Mr. Tiderington discusses the testimony of  11 Mr. Malczyk, correct?  12 A. Yes.  13 Q. And he cites to the fact that Mr. Malczyk was  14 very clear that the Guevara and Halvorsen report was  15 false, correct?  16 A. That's what I believe he said in his  17 deposition. Yes, sir.  18 Q. Okay. And to what role did that play, if any,  19 in your opinions in this case?  20 MR. KIVETZ: Objection. Form.  21 THE WITNESS: None --  22 MR. KIVETZ: Foundation. Outside the scope of  23 his report.  24 THE WITNESS: None, because this dealt with  25 the Gonzalez murder, not the -- the Mont -- the</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. KIVETZ: Objection. Form. Foundation.  2 BY MR. SWAMINATHAN:  3 Q. -- when you review -- I'm sorry. Go ahead,  4 Jeff.  5 MR. KIVETZ: Yeah. I mean, it seems like what  6 you're trying to do is get him to provide opinions  7 that he hasn't provided and that's outside the four  8 corners of his report. If that's what you're  9 trying to do, I'd say that that's improper and also  10 inconsistent with his report. So that's what I'm  11 trying to figure out, if you're trying to get him  12 to provide opinions that he's not providing?  13 MR. SWAMINATHAN: Nothing to solve, I'll just  14 ask the questions. And I'm not trying to do that,  15 obviously.  16 BY MR. SWAMINATHAN:  17 Q. I would -- Mr. Andreu, I want to be very  18 clear. You're not intending to offer any opinions in  19 this deposition today that are different or additional  20 to what you offered in your report; is that fair?  21 MR. KIVETZ: Objection. Beyond what he's  22 testified to today, sure.  23 THE WITNESS: Yes. My report speaks for  24 itself.  25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 141</p> <p>1 Andujar murder.  2 BY MR. SWAMINATHAN:  3 Q. Did you take into consideration, in offering  4 your opinions in this case, that a police officer swore  5 under oath that Detective Guevara and Halvorsen's report  6 was -- had created a false report?  7 MR. KIVETZ: Objection. Form. Foundation.  8 Speculative. Outside the scope of his report.  9 THE WITNESS: No, sir. Not really.  10 BY MR. SWAMINATHAN:  11 Q. Okay.  12 MR. KIVETZ: Do you guys want to do about some  13 type of break here for lunch or I don't -- you said  14 you weren't going to be --  15 MR. SWAMINATHAN: Yeah, I think, I mean, I  16 think I'm going to be done inside of an hour.  17 MR. KIVETZ: You think you're going to be done  18 inside of an hour?  19 MR. SWAMINATHAN: Yes. And -- and --  20 MR. KIVETZ: Do you have some place to go at  21 2:00?  22 MR. SWAMINATHAN: No, but ideally even less  23 than that. So let's -- so it's up to you, though,  24 we could take a lunch break, though. It's really  25 up to you.</p>

<p style="text-align: right;">Page 142</p> <p>1 THE WITNESS: I -- I don't need a lunch break.</p> <p>2 I just need a bathroom break.</p> <p>3 MR. KIVETZ: Yeah. I only just need, like,</p> <p>4 ten minutes, though. Like, I'm personally hungry,</p> <p>5 I've seen you sna -- we're off the record, Sydney,</p> <p>6 please.</p> <p>7 THE REPORTER: Okay. We're off the record.</p> <p>8 The time is 12:56.</p> <p>9 (OFF THE RECORD)</p> <p>10 THE REPORTER: We are back on the record for</p> <p>11 the deposition of Nelson Andreu being conducted by</p> <p>12 videoconference. My name is Sydney Little. Today</p> <p>13 is May 12th, 2023, and the time is 1:16 p.m.</p> <p>14 Central.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. Mr. Andreu, when witnesses review --</p> <p>17 strike that. We talked earlier about your practices</p> <p>18 with regard to the conduct of eyewitness identification</p> <p>19 procedures and in particular, photo arrays. Do you</p> <p>20 recall that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. When you would conduct photo arrays</p> <p>23 with witnesses, would you document how long it took for</p> <p>24 the witness to be able to make an identification?</p> <p>25 MR. KIVETZ: Objection. Form. Foundation.</p>	<p style="text-align: right;">Page 144</p> <p>1 a little longer. But normally it takes, usually,</p> <p>2 no longer than 30 seconds.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. In your experience, having conducted a lot of</p> <p>5 photo arrays, typically, usually you can -- the witness</p> <p>6 is going to be able to make an identification with 30 --</p> <p>7 within 30 seconds if they're going to be able to make an</p> <p>8 identification. Am I understanding you correctly?</p> <p>9 A. Most of the time.</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: Yes. Most of the time.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Okay. And if it was going to -- if it took</p> <p>14 the witness five minutes, you know, before they could</p> <p>15 make a pick, is that something you would sort of note as</p> <p>16 you're considering the reliability of the witness's</p> <p>17 identification?</p> <p>18 MR. KIVETZ: Objection. Form. Incomplete</p> <p>19 hypothetical.</p> <p>20 THE WITNESS: Again, and -- and I know what</p> <p>21 you're saying, that he's -- that he said it in</p> <p>22 testimony, that it took him five to ten minutes.</p> <p>23 People, in my opinion, have a -- a -- a -- a hard</p> <p>24 time judging time. And again, he may be saying</p> <p>25 from the time the detectives got there to the time</p>
<p style="text-align: right;">Page 143</p> <p>1 I'm not sure what time period we're talking about</p> <p>2 here.</p> <p>3 THE WITNESS: Document, like, to say it took</p> <p>4 him two seconds or 20 seconds? No, I don't</p> <p>5 remember ever documenting that in a report.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Would it be fair to -- strike that. The</p> <p>8 amount of time it takes a witness to make an</p> <p>9 identification, is that something that would be relevant</p> <p>10 to you, ever, as a investigator?</p> <p>11 MR. KIVETZ: Objection. Form. Speculative.</p> <p>12 THE WITNESS: I don't understand why -- what</p> <p>13 your question is, would it be relevant?</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Yeah. Like, if it took the witness a minute</p> <p>16 of looking at the photographs, you know, would that</p> <p>17 matter to you, versus whether the witness saw it and</p> <p>18 said immediately, aha, that's the person?</p> <p>19 MR. KIVETZ: Objection. Form. Incomplete</p> <p>20 hypothetical.</p> <p>21 THE WITNESS: It depends on the circumstances.</p> <p>22 For example, this is the victim and somebody close</p> <p>23 to the witness, and he or she looks at this</p> <p>24 photographs [sic] and -- and maybe crying or</p> <p>25 unable, you know, something like that, it may take</p>	<p style="text-align: right;">Page 145</p> <p>1 he left was five or ten minutes. I don't think in</p> <p>2 his testimony, he says it took me five to ten</p> <p>3 minutes to pick out the photograph. So I don't --</p> <p>4 you know, to me, it was a positive identification</p> <p>5 that was probably done -- in reading some of the</p> <p>6 other detectives' testimony, it did not take five</p> <p>7 to ten minutes.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. Okay. If you agree that if it had really</p> <p>10 taken the witness five to ten minutes to be able to pick</p> <p>11 a photo, that would cause you to have some concerns</p> <p>12 about whether that was a good identification; is that</p> <p>13 fair?</p> <p>14 MR. KIVETZ: Objection to form.</p> <p>15 THE WITNESS: If the individual is looking at</p> <p>16 the lineup for five to ten minutes before he or she</p> <p>17 makes an identification, yes. I mean, I would -- I</p> <p>18 would -- I wouldn't -- I would say, listen, you --</p> <p>19 you want to ask a question? Sometimes witnesses</p> <p>20 will ask questions during the lineup about hair or</p> <p>21 a mustache or something like that. So why -- why</p> <p>22 is this taking place? I --</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. If it was -- in other words, if I'm</p> <p>25 understanding you correctly, if it was taking as much as</p>



<p style="text-align: right;">Page 146</p> <p>1 -- if the witness is staring at the pictures for five</p> <p>2 minutes, at some point you're probably going to end that</p> <p>3 procedure; is that fair?</p> <p>4 MR. KIVETZ: Objection. Form. Foundation.</p> <p>5 Speculative. Incomplete hypothetical.</p> <p>6 THE WITNESS: I -- I wouldn't say end it. I</p> <p>7 would say I would ask, "What's -- what's going on?</p> <p>8 What's the problem? Do you recognize anybody or</p> <p>9 don't you?" Something to -- something like that.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Okay. And in this case, you indicated that</p> <p>12 you saw the testimony of Mr. Rodriguez, that it took him</p> <p>13 five to ten minutes, you saw that, correct?</p> <p>14 A. Yes.</p> <p>15 MR. KIVETZ: Objection. Form.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. And for purposes of your report, you assume</p> <p>18 that it didn't really actually take him five to ten</p> <p>19 minutes of actually viewing the photos; is that fair?</p> <p>20 MR. KIVETZ: Objection.</p> <p>21 THE WITNESS: I don't believe it took that</p> <p>22 long, correct.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Okay. And so you, for purposes of your</p> <p>25 report, interpreted that testimony to mean that he was</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Okay.</p> <p>2 Q. And on Paragraph 27, it talks about Melendez</p> <p>3 and Rodriguez making identifications of a Buick Park</p> <p>4 Avenue in the police parking lot, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. That information in Paragraph 27, that</p> <p>7 is not what Mr. Rodriguez and Mr. Melendez testified to,</p> <p>8 correct?</p> <p>9 MR. KIVETZ: Hold on a second. You're on</p> <p>10 Paragraph 27?</p> <p>11 MR. SWAMINATHAN: Yeah.</p> <p>12 MR. KIVETZ: Yeah. Objection to form.</p> <p>13 THE WITNESS: Okay. They -- they -- this is</p> <p>14 what is in the police reports. They may have</p> <p>15 testified differently at -- at trial. I think</p> <p>16 there was an issue with the tinted windows in their</p> <p>17 trial testimony.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Okay. So in Paragraph 27, why didn't you</p> <p>20 include the information from the criminal trial</p> <p>21 testimony and their deposition testimony?</p> <p>22 MR. KIVETZ: Objection. Form.</p> <p>23 THE WITNESS: Because I was -- if you go back</p> <p>24 to the previous page, this is -- these are not</p> <p>25 opinions. These are from the homicide</p>
<p style="text-align: right;">Page 147</p> <p>1 talking about, you know, maybe how long the police</p> <p>2 officers were there or something else, but not the</p> <p>3 amount of time he was looking at the photos, correct?</p> <p>4 MR. KIVETZ: Objection. Form.</p> <p>5 THE WITNESS: That, and, again, the people's</p> <p>6 perception of time is -- is difficult to judge.</p> <p>7 BY MR. SWAMINATHAN:</p> <p>8 Q. Okay. Because if, in fact, he'd been looking</p> <p>9 at the photos for five to ten minutes before he could</p> <p>10 make a pick, that would cause you to have concerns about</p> <p>11 the reliability of his pick; is that fair?</p> <p>12 MR. KIVETZ: Objection. Form. Foundation.</p> <p>13 THE WITNESS: If the photograph were placed in</p> <p>14 front of him and it took him up to ten minutes to</p> <p>15 say something, without any interjection from any of</p> <p>16 the detectives, yes, that would be of some sort of</p> <p>17 concern.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Okay. If you look at -- let's see. Go back</p> <p>20 to your report, sir, please.</p> <p>21 A. My report? Yes.</p> <p>22 Q. Yeah. Thank you. If you go to Page 8 of your</p> <p>23 report.</p> <p>24 A. Okay. Page 8.</p> <p>25 Q. If you go to Paragraph 27.</p>	<p style="text-align: right;">Page 149</p> <p>1 investigation.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Okay. So Paragraphs 17 through 29 are written</p> <p>4 based on the information contained in the police</p> <p>5 investigation file, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And then Paragraph 30 -- well, we can</p> <p>8 skip that. Paragraph 37 on, is where you have your</p> <p>9 opinions, correct?</p> <p>10 A. Paragraph 37 is where they begin. Yes.</p> <p>11 Q. Okay. And in your opinion section, you don't</p> <p>12 discuss anywhere that Mr. Melendez and Mr. Rodriguez</p> <p>13 testified that they did not identify the Buick Park</p> <p>14 Avenue as being the vehicle, correct?</p> <p>15 MR. KIVETZ: Objection. Form. Misstates the</p> <p>16 evidence. And --</p> <p>17 THE WITNESS: I'm looking through the report,</p> <p>18 give me a minute.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Uh-huh.</p> <p>21 A. In number 48, there is similarity. The</p> <p>22 description of the -- the vehicle by the eyewitnesses as</p> <p>23 having had spoke wheels, is consistent with the vehicle</p> <p>24 they identified in the area parking lot.</p> <p>25 Q. Okay. So in Paragraph 48, you discuss this</p>

<p style="text-align: right;">Page 150</p> <p>1 issue of their -- the car identification, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the information in Paragraph 48 in your</p> <p>4 opinions is based on the information contained in the</p> <p>5 police reports, correct?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: 48? Yes.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. In Paragraph 48, you do not discuss the</p> <p>10 testimony at the criminal trial and the deposition</p> <p>11 testimony of Mr. Melendez or Mr. Rodriguez, correct?</p> <p>12 A. Correct. I do not.</p> <p>13 Q. Okay. And there's nowhere in your report</p> <p>14 where you discuss the deposition testimony or criminal</p> <p>15 trial testimony of Mr. Melendez and Mr. Rodriguez</p> <p>16 regarding the car identification; is that fair?</p> <p>17 MR. KIVETZ: Objection. Form. You know,</p> <p>18 beyond the materials reviewed.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Go ahead.</p> <p>21 A. I believe so.</p> <p>22 Q. Okay. Okay. In your opinion, you don't offer</p> <p>23 any opinions about whether or not Mr. Melendez and</p> <p>24 Mr. Rodriguez actually made an identification of the car</p> <p>25 in the police parking lot; is that true?</p>	<p style="text-align: right;">Page 152</p> <p>1 and correct it later. I mean, it's clearly in his</p> <p>2 report.</p> <p>3 MR. SWAMINATHAN: Do you want to tell me where</p> <p>4 in his report he discusses the testimony of</p> <p>5 Melendez and Rodriguez about the car ID?</p> <p>6 MR. KIVETZ: It's in 48 and he reviewed it,</p> <p>7 and he's told you multiple times that he reviewed</p> <p>8 everything in consideration of making his --</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. So Paragraph 48, we just talked about</p> <p>11 it, though. Mr. Andreu, you and I agree that first, we</p> <p>12 talked about Paragraph 27, and in Paragraph 27, you</p> <p>13 agree that that is based on the police reports, not the</p> <p>14 testimony of Mr. Melendez and Mr. Rodriguez, fair?</p> <p>15 A. Fair.</p> <p>16 Q. Okay. And Paragraph 48 is, again, based on</p> <p>17 the police reports, not the testimony of Mr. Melendez</p> <p>18 and Mr. Rodriguez, fair?</p> <p>19 MR. KIVETZ: Objection. Form.</p> <p>20 THE WITNESS: Again, the -- the opinions are</p> <p>21 formed on the totality of the case. Is there</p> <p>22 mention of the testimony by the witnesses in</p> <p>23 reference to the -- the Park Avenue? No.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. Okay. You agree that in the testimony of</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: I think we just went over that.</p> <p>3 Now, Page -- Page 8, number 27, it says they --</p> <p>4 they identified the vehicle.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Maybe I'm misunderstanding. I understood you</p> <p>7 in Paragraph 27 to just be reciting what's in the police</p> <p>8 report, that that's not your opinion.</p> <p>9 A. Oh, I see what you're saying.</p> <p>10 Q. Is that correct?</p> <p>11 A. Yes.</p> <p>12 MR. KIVETZ: Objection. Form. You're asking</p> <p>13 him to go through his entire report and ask him if</p> <p>14 he can track down a single line about whether or</p> <p>15 not the individuals identified the report [sic]. I</p> <p>16 mean, I don't think that that's very fair.</p> <p>17 MR. SWAMINATHAN: I don't think it's hard. I</p> <p>18 mean, Mr. Andreu, you -- I think we've already --</p> <p>19 MR. KIVETZ: It's in his report. I mean, it's</p> <p>20 right there. Why don't you direct him to the</p> <p>21 paragraph instead of wasting everyone's time and --</p> <p>22 MR. SWAMINATHAN: It's not -- it's --</p> <p>23 MR. KIVETZ: -- not play this trickster game</p> <p>24 where you get him to say that it's not because he</p> <p>25 can't quickly find it, and then we have to go back</p>	<p style="text-align: right;">Page 153</p> <p>1 Mr. Melendez and Mr. Rodriguez, they deny that they made</p> <p>2 a positive identification of the cars being the vehicle</p> <p>3 that was used with the suspects, correct?</p> <p>4 MR. KIVETZ: Objection. Form. Misstates the</p> <p>5 evidence.</p> <p>6 THE WITNESS: I don't know if -- if they</p> <p>7 actually say, "No, that was not the car." They may</p> <p>8 say it was similar. It had the spoke wheels. I</p> <p>9 think their -- one of the things was they were</p> <p>10 concerned about the tinted windows, things like</p> <p>11 that, but I don't think they outright say, "That</p> <p>12 was not the car."</p> <p>13 BY MR. SWAMINATHAN:</p> <p>14 Q. Did the -- any of the -- did Mr. Melendez say</p> <p>15 that anywhere in his testimony?</p> <p>16 A. I don't --</p> <p>17 MR. KIVETZ: Objection. Form. Foundation.</p> <p>18 THE WITNESS: I don't remember exactly what he</p> <p>19 said in his deposition testimony or trial</p> <p>20 testimony, what either of the witnesses may or may</p> <p>21 not have said. I just recall that they -- their</p> <p>22 concern was primarily the aspect of the tint on the</p> <p>23 windows.</p> <p>24 BY MR. SWAMINATHAN:</p> <p>25 Q. In the police reports, did the police reports</p>

<p style="text-align: right;">Page 154</p> <p>1 document that the individuals said that it was a</p> <p>2 positive identification of the vehicle, or did they</p> <p>3 document that they said it looks similar or it could be</p> <p>4 the vehicle? Did they make that distinction in the</p> <p>5 police report?</p> <p>6 MR. KIVETZ: Objection. Form. Foundation.</p> <p>7 This isn't a memory test.</p> <p>8 THE WITNESS: I -- I believe that the -- in</p> <p>9 the police report, it says that they identified the</p> <p>10 vehicle.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Okay. The police reports -- you documented it</p> <p>13 in Paragraph 27, as you identified. The police reports</p> <p>14 do not state that Mr. Melendez and Mr. Rodriguez said,</p> <p>15 "This is a similar looking car or could be the car."</p> <p>16 It's not documented in the police reports, correct?</p> <p>17 MR. KIVETZ: Objection. Form.</p> <p>18 THE WITNESS: Again, there was a lot reviewed</p> <p>19 concerning the car, but I do not believe that that</p> <p>20 is in the police report.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. Okay. And if, in fact, Mr. Melendez and</p> <p>23 Mr. Rodriguez did not make an identification of the</p> <p>24 vehicle, that should have been documented, correct?</p> <p>25 MR. KIVETZ: Objection. Form.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. Okay. And so ultimately you're not offering</p> <p>2 an opinion in this case that Mr. Melendez's testimony is</p> <p>3 true or not true about what happened; is that fair?</p> <p>4 A. Yes. I -- I'm not judging people's</p> <p>5 testimonies as to -- as to truthfulness</p> <p>6 Q. For purposes of your opinions, you're assuming</p> <p>7 that, in fact, the police reports are true, that</p> <p>8 Mr. Melendez made a positive identification of the</p> <p>9 vehicle; is that fair?</p> <p>10 MR. KIVETZ: Objection. Form. Assuming if</p> <p>11 the trier of fact credits that testimony.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. Go ahead, Mr. Andreu.</p> <p>14 A. That's -- that's it. It's going to -- the --</p> <p>15 it's -- I believe that the police reports were accurate.</p> <p>16 But again, like I said before, it's not to me to draw a</p> <p>17 credibility conclusion.</p> <p>18 Q. Okay.</p> <p>19 A. That's going to be the judge or a jury later</p> <p>20 on down the road.</p> <p>21 Q. Okay. And could we look at the section on</p> <p>22 Pages --</p> <p>23 A. My report?</p> <p>24 Q. Yeah, your report. I'm sorry. If you go to</p> <p>25 your opinion section starting on Page 37.</p>
<p style="text-align: right;">Page 155</p> <p>1 THE WITNESS: In the police report?</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. In the police report, yes.</p> <p>4 A. If they did not make an identification, yes.</p> <p>5 Q. Okay. If Mr. Melendez looked at what was</p> <p>6 taken to the parking lot and did not identify the Buick</p> <p>7 Park Avenue as being the vehicle that was used by the</p> <p>8 shooter, that should have been documented, correct?</p> <p>9 MR. KIVETZ: Objection. Form.</p> <p>10 THE WITNESS: Yes. I would say that should</p> <p>11 have been documented.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. And if, in fact, Mr. Melendez, as he</p> <p>14 testified, did not identify that as being the vehicle,</p> <p>15 it would be a deviation from accepted police practices</p> <p>16 not to have documented that; is that fair?</p> <p>17 MR. KIVETZ: Objection. Form.</p> <p>18 THE WITNESS: Again, a deviation, it should</p> <p>19 have been in there. Could it have been something</p> <p>20 that slipped through the cracks? That, too. I</p> <p>21 don't think it was intentionally left out of there,</p> <p>22 but again, that -- that's my opinion and -- and the</p> <p>23 trier of facts will have to determine who told the</p> <p>24 truth.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 157</p> <p>1 A. I don't have 37 pages.</p> <p>2 Q. I'm sorry, Paragraph 37 on Page 9. My</p> <p>3 apologies.</p> <p>4 A. Okay.</p> <p>5 Q. Okay. Paragraphs 37 through 41, the beginning</p> <p>6 of your opinion section.</p> <p>7 A. Okay.</p> <p>8 Q. I think, as you just indicated, those are</p> <p>9 based on the assumption that the police reports are</p> <p>10 accurate and truthful, correct?</p> <p>11 MR. KIVETZ: Objection. Form.</p> <p>12 THE WITNESS: Again, based on the totality of</p> <p>13 the -- of the information that -- that I reviewed,</p> <p>14 including the police reports.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. But Paragraph 37 through 41 would not</p> <p>17 be true if you credit some of the testimony that you</p> <p>18 reviewed in the depositions; is that fair?</p> <p>19 A. I don't know. Let me see.</p> <p>20 MR. KIVETZ: Objection. Form.</p> <p>21 THE WITNESS: Let me see. Okay. Ask me the</p> <p>22 question again, sir.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. Yeah. Paragraphs 37 through 41 are based on</p> <p>25 the assumption that the information contained in the</p>

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1 police reports is true?

2 MR. KIVETZ: Objection. Form.

3 THE WITNESS: It also includes the  
4 complexities and the way homicide investigations  
5 are never perfect. But again, it's the totality of  
6 everything that I read.

7 BY MR. SWAMINATHAN:

8 Q. Yes. But if you look at Paragraph 38, for  
9 example, there you opine that the police officers acted  
10 in accordance with generally accepted police practices,  
11 correct?

12 A. Correct.

13 Q. And if you credited the testimony of Hector  
14 Montanez or Jose Melendez, for example, you would not  
15 opine that they -- the detective acted in accordance  
16 with generally accepted police practices; is that fair?

17 MR. KIVETZ: Objection. Form. What  
18 testimony?

19 THE WITNESS: I -- I, again, am -- am not  
20 drawing a conclusion as to the truthfulness or not  
21 of -- of Montanez and -- and the witnesses. But --  
22 and again, I don't say here in this -- in these  
23 opinions, that the police reports -- that what's  
24 written in the police reports is the gospel. I  
25 just say in, again, in the totality of the -- of

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1 the information that I reviewed.

2 BY MR. SWAMINATHAN:

3 Q. Okay. So in Paragraph 38, we can understand -  
4 - because you considered the Montanez and the Melendez  
5 testimony about what occurred during their interviews,  
6 we can understand that you believe that what they  
7 described was, in fact, consistent with generally  
8 accepted police practices?

9 A. What they said in their sworn statements to  
10 the State Attorney, yes.

11 Q. And what about their deposition testimony and  
12 criminal trial testimonies?

13 A. Again, they -- they -- stories changed from  
14 what they gave the -- during their State Attorney's  
15 statement. And as I've said before, while not giving  
16 credibility weight to one or the other, my experience  
17 has shown that the initial -- initial statements more  
18 close to the time of the incident is probably more  
19 accurate.

20 Q. Okay. And Paragraph 38 is based on that  
21 assumption, that the information given to the State's  
22 Attorney and in the police reports is more accurate than  
23 the subsequent testimony at the criminal trial and  
24 deposition, fair?

25 THE WITNESS: Not necess --

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1 MR. KIVETZ: Objection. Form.

2 THE WITNESS: Not necessarily more accurate.

3 Again, I'm not -- I'm not here to -- to give -- put  
4 weight on who's telling the truth and who's not.  
5 That's up -- that's not up to me. It's just what I  
6 read in the entire file, the thousands of pages in  
7 this file, that I made these opinions. I can't  
8 specifically say it was A and not B, or C and  
9 not D.

10 BY MR. SWAMINATHAN:

11 Q. Is there any place in your report where you  
12 credit the testimony of Hector Montanez from his  
13 deposition?

14 MR. KIVETZ: Objection. Form. Asked and  
15 answered.

16 THE WITNESS: I don't believe I've mentioned  
17 their depositions at all. No, sir.

18 BY MR. SWAMINATHAN:

19 Q. Is there any set of opinions that you have in  
20 your report that are based on crediting Mr. Montanez'  
21 deposition testimony about what happened?

22 MR. KIVETZ: Objection. Form.

23 THE WITNESS: No, sir. I don't believe so.

24 BY MR. SWAMINATHAN:

25 Q. Because if you credited his testimony, your

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1 opinions would be that there were violations of  
2 generally accepted police practices, correct?

3 MR. KIVETZ: Objection. Form. If a jury  
4 credits. Go ahead.

5 THE WITNESS: That's -- that's not my  
6 decision.

7 BY MR. SWAMINATHAN:

8 Q. I'll ask the question again. If you credited  
9 the testimony of Mr. Montanez, it would be a deviation  
10 from generally accepted police practices; is that fair?

11 MR. KIVETZ: Objection. Form.

12 THE WITNESS: If -- if I were to believe what  
13 he says in -- in -- in their statements, then there  
14 -- there could be issues with police practice.

15 BY MR. SWAMINATHAN:

16 Q. Okay. And if the jury ultimately credits the  
17 testimony of Mr. Montanez, Paragraph 38 would not be  
18 true in your report, correct?

19 MR. KIVETZ: Objection. Form.

20 THE WITNESS: I don't know that it wouldn't be  
21 true. My opinion would still be the same. The  
22 jury will decide, well, I believe what they said in  
23 their -- in their testimony or depositions or trial  
24 testimony, but that's the jury's decision to make.

25 BY MR. SWAMINATHAN:



<p style="text-align: right;">Page 162</p> <p>1 Q. Okay. And so your opinion is based on the</p> <p>2 assumption that Mr. Montanez' testimony is not true,</p> <p>3 correct?</p> <p>4 MR. KIVETZ: Objection. Form. Asked and</p> <p>5 answered, like, 13 times.</p> <p>6 THE WITNESS: No, sir. Not -- not -- not that</p> <p>7 I don't believe what he said. Again, I -- like I</p> <p>8 said, my -- my experience and training and</p> <p>9 knowledge has led me to assume and believe that the</p> <p>10 statements given as close -- closer in proximity to</p> <p>11 the incident is probably the most accurate.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. If you go to Page 11 of your report.</p> <p>14 A. Yes, sir.</p> <p>15 Q. In Paragraph 52 you say, "Had there been no</p> <p>16 identification and/or conflicting identification(s),</p> <p>17 then the detectives should have sought out additional</p> <p>18 suspects." Do you see that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What do you mean by that?</p> <p>21 A. That means if -- if the witnesses had not</p> <p>22 identified Sierra, then this -- there's, you know, half</p> <p>23 the people in Chicago were suspects, so the</p> <p>24 investigation would continue.</p> <p>25 Q. And so if there had not been an identification</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Yes, it's the -- and -- yes. And so for</p> <p>2 Mr. Montanez, what you're indicating is that the</p> <p>3 decision not to charge him was made by the ASA, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. And the ASA does not decide whether or</p> <p>6 not a police officer does additional investigation, do</p> <p>7 you agree with that?</p> <p>8 MR. KIVETZ: Objection. Form.</p> <p>9 THE WITNESS: No, but --</p> <p>10 MR. KIVETZ: Speculative. Incomplete</p> <p>11 hypothetical.</p> <p>12 THE WITNESS: The State Attorney has asked me</p> <p>13 on -- on several cases to -- to do additional</p> <p>14 investigation.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. And you're not -- you don't need the State's</p> <p>17 Attorney's permission as a detective to be able to</p> <p>18 continue an investigation, do you?</p> <p>19 MR. KIVETZ: Objection. Form. Foundation.</p> <p>20 Speculative. Incomplete hypothetical.</p> <p>21 THE WITNESS: Permission, no, no. But if --</p> <p>22 if the -- if the State Attorney wants additional</p> <p>23 investigation, it -- it should be done. The State</p> <p>24 Attorney may always say, "Listen, this -- this --</p> <p>25 this individual," again, using Montanez</p>
<p style="text-align: right;">Page 163</p> <p>1 of Sierra, the detectives should have gone back to work</p> <p>2 to identify additional suspects?</p> <p>3 A. Go back and continue the investigation, yes.</p> <p>4 Q. Okay. And in this case, by the way, there</p> <p>5 were not -- Mr. Montanez was not charged, correct?</p> <p>6 A. That's my understanding, yes.</p> <p>7 Q. From your perspective, should there have been</p> <p>8 additional investigation that was done to try to develop</p> <p>9 additional evidence against Mr. Montanez?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 THE WITNESS: That was the decision that was</p> <p>12 made by the State Attorney's Office, and it was</p> <p>13 beyond the -- the realm of what the detectives</p> <p>14 could say. If you could --</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. You're talking about the decision to approve</p> <p>17 or not approve charges, was made by the State's</p> <p>18 Attorney, is that what you're saying?</p> <p>19 A. Yes.</p> <p>20 MR. KIVETZ: Object -- again, it's Hector</p> <p>21 Montanez, right? Want to just make sure --</p> <p>22 MR. SWAMINATHAN: Yes.</p> <p>23 MR. KIVETZ: -- we're talking about the same</p> <p>24 thing.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 165</p> <p>1 hypothetically, "he didn't know what was going on,</p> <p>2 we're never going to charge him," then that's it.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Was there any indication in the -- oh, I'm</p> <p>5 sorry. Go ahead.</p> <p>6 A. I'm not saying that's what happened, but I'm</p> <p>7 just giving you a hypothetical.</p> <p>8 Q. Did you see any evidence in this investigation</p> <p>9 that the State's Attorney instructed the police officers</p> <p>10 that there was never going to be charges against Hector</p> <p>11 Montanez?</p> <p>12 MR. KIVETZ: Object to the form.</p> <p>13 THE WITNESS: I didn't -- I didn't hear</p> <p>14 anything either way.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Okay. And you -- did you see any evidence in</p> <p>17 your review of all the materials in this case, the</p> <p>18 State's Attorney instructed the homicide detectives not</p> <p>19 to conduct further investigation?</p> <p>20 A. Again, same thing, I didn't hear to or not to.</p> <p>21 Q. What the police report said, that you</p> <p>22 reviewed, is that the State's Attorney decided not to</p> <p>23 charge Montanez because they didn't have enough evidence</p> <p>24 against Mr. Montanez, correct?</p> <p>25 A. Correct. But they did --</p>



<p style="text-align: right;">Page 166</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: But they did -- there's no</p> <p>3 mention of the -- the State Attorney saying, "Do --</p> <p>4 do some more investigation or go talk to this</p> <p>5 person or that person," no.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. And is it your -- and so it's -- if I</p> <p>8 understand correctly, your opinion is that police</p> <p>9 officers should not conduct additional investigation</p> <p>10 unless the State's Attorney tells them to?</p> <p>11 MR. KIVETZ: Objection. Form. Misstates his</p> <p>12 testimony.</p> <p>13 THE WITNESS: That -- that's not what I'm</p> <p>14 saying. I'm just saying that in the -- in the file</p> <p>15 that I reviewed, there's no mention by the State</p> <p>16 Attorney, that I saw, of either one way or another.</p> <p>17 At the time, he said, and it's -- it's in the file,</p> <p>18 that there was insufficient evidence to charge</p> <p>19 Montanez.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. If this had been your case --</p> <p>22 MR. KIVETZ: Objection.</p> <p>23 BY MR. SWAMINATHAN:</p> <p>24 Q. -- would you have done additional</p> <p>25 investigation?</p>	<p style="text-align: right;">Page 168</p> <p>1 gotten additional information that way? Who knows?</p> <p>2 That's too -- I -- I can't speculate on what's</p> <p>3 going to happen tomorrow or six months down the</p> <p>4 road.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. And so if you'd been the homicide investigator</p> <p>7 on this case, you would've said, "Nah, probably not</p> <p>8 going to go anywhere, I'm just going to do no further</p> <p>9 investigation"?</p> <p>10 MR. KIVETZ: Objection. Form. Foundation.</p> <p>11 Misstates his testimony. Speculative.</p> <p>12 THE WITNESS: No, sir. I wouldn't say that.</p> <p>13 Just I -- I'm saying it would be -- it would be</p> <p>14 probably put on the back burner because there are</p> <p>15 other cases coming in. But if information came in,</p> <p>16 like again, I'll cite an example, Montanez tells</p> <p>17 another gang member that's later arrested and wants</p> <p>18 to flip and say, "Hey, by the way, Montanez told me</p> <p>19 that he's the one that handed Sierra the -- the</p> <p>20 gun, because he wanted this guy killed -- one of</p> <p>21 the guys in that car killed," then that's a</p> <p>22 different story. But it's -- it's -- it's -- at</p> <p>23 the time of -- of the -- of Sierra's arrest, there</p> <p>24 was no other evidence that I'd read about to charge</p> <p>25 Montanez.</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. KIVETZ: Objection. Form. Foundation.</p> <p>2 Speculative.</p> <p>3 THE WITNESS: Not necessarily. Listen, there</p> <p>4 were two people in the car. Sierra would have to</p> <p>5 say, "Montanez handed me the gun and told me to</p> <p>6 shoot." Is he ever going to say that? No. There</p> <p>7 was nobody else in the car. Where's the other</p> <p>8 information going to come from?</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. So you're -- so in this case, you</p> <p>11 believe, based on the evidence, there was no point in</p> <p>12 doing any further investigation into Montanez?</p> <p>13 A. No.</p> <p>14 MR. KIVETZ: Objection. Form.</p> <p>15 THE WITNESS: Again, that's not what I'm</p> <p>16 saying. I'm just citing you as an example, that</p> <p>17 Sierra is not going to --</p> <p>18 MR. KIVETZ: Let him finish.</p> <p>19 THE WITNESS: -- Sierra is not going to point</p> <p>20 the finger at Montanez and say, "He handed me the</p> <p>21 gun," or "He told me he was having a problem with</p> <p>22 these guys and that's why I fired," you know,</p> <p>23 something to that extent. That's -- that's one.</p> <p>24 Could Montanez have told somebody else, "Yeah,</p> <p>25 I was part of it," you know, six months later, and</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Did you see any efforts in the course of the</p> <p>3 investigation to identify who the male Black was in the</p> <p>4 back of the car?</p> <p>5 MR. KIVETZ: Objection. Form.</p> <p>6 THE WITNESS: He -- it -- they -- he refused</p> <p>7 to identify him. And what -- what the police</p> <p>8 department did, the detectives did to try and</p> <p>9 identify him, I -- I can't answer that. Was there</p> <p>10 any attempt to identify him? I can't answer that.</p> <p>11 Did the State Attorney do something? I don't know.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. In this case, was there anything preventing</p> <p>14 the detectives from doing some additional investigation</p> <p>15 to try to obtain physical evidence?</p> <p>16 MR. KIVETZ: Objection. Form.</p> <p>17 THE WITNESS: Physical evidence of what type?</p> <p>18 Testimonial, I can see, but not physical.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Was there any physical evidence that could</p> <p>21 have potentially been collected in this case from</p> <p>22 Mr. Montanez?</p> <p>23 A. I don't think so.</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 THE WITNESS: I'm just thinking of</p>

<p style="text-align: right;">Page 170</p> <p>1 Mr. Montanez as a driver, I can't think of</p> <p>2 anything.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Could a search have been done of</p> <p>5 Mr. Montanez's home?</p> <p>6 MR. KIVETZ: Objection. Form. Foundation.</p> <p>7 Speculative.</p> <p>8 THE WITNESS: I don't know that the detectives</p> <p>9 could convince a judge to give them a search</p> <p>10 warrant based on the circumstances and the facts</p> <p>11 that they knew at that time.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. That's what I'm asking you. With with Hector</p> <p>14 Montanez's handwritten statement, would there have been</p> <p>15 any basis for them to try to get access to his home to</p> <p>16 search for a murder weapon, for example?</p> <p>17 MR. KIVETZ: Objection. He just answered that</p> <p>18 question.</p> <p>19 THE WITNESS: No. I -- I don't think there</p> <p>20 was sufficient information to justify and get</p> <p>21 probable cause to search his house.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Was there anything to prevent them from asking</p> <p>24 him for consent to search?</p> <p>25 A. I --</p>	<p style="text-align: right;">Page 172</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Based on your experience, you would've</p> <p>3 expected the vehicle to be searched?</p> <p>4 MR. KIVETZ: Objection. That misstates what</p> <p>5 he said.</p> <p>6 THE WITNESS: Yes. But -- and -- and I'm sure</p> <p>7 that it -- it was. Knowing police officers like I</p> <p>8 know them, that vehicle would've been, was or</p> <p>9 would've been, should have been searched.</p> <p>10 BY MR. SWAMINATHAN:</p> <p>11 Q. Absolutely. And did you see any evidence that</p> <p>12 the vehicle was, in fact, searched in your review of the</p> <p>13 police records in this case?</p> <p>14 MR. KIVETZ: Objection. Form. You're --</p> <p>15 assumes facts -- or misrepresents the facts,</p> <p>16 whatever you want to call it. Go ahead.</p> <p>17 THE WITNESS: The vehicle was photographed. As</p> <p>18 far as any mention of an actual search, I did not</p> <p>19 see it.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Yeah. Did you see any evidence -- or strike</p> <p>22 that. Did you see any information in the file that</p> <p>23 evidence technicians were called out to search --</p> <p>24 MR. KIVETZ: Objection. Form.</p> <p>25 BY MR. SWAMINATHAN:</p>
<p style="text-align: right;">Page 171</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 THE WITNESS: I don't know that -- that there</p> <p>3 was anything preventing them, or if they did, I</p> <p>4 don't know. I didn't read anything about that in</p> <p>5 their file one way or another.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. You didn't see anything in the file -- oh,</p> <p>8 sorry. Go ahead.</p> <p>9 A. -- one way or another.</p> <p>10 Q. You didn't see anything in the file indicating</p> <p>11 that they asked Mr. Montanez if they could search his</p> <p>12 home?</p> <p>13 A. No, sir.</p> <p>14 MR. KIVETZ: Objection.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. You didn't see anything in the file indicating</p> <p>17 that they made efforts to engage in some forensic</p> <p>18 assessment of the vehicle?</p> <p>19 MR. KIVETZ: Objection. Form.</p> <p>20 THE WITNESS: They -- the vehicle, I know was</p> <p>21 photographed. My knowledge and experience would</p> <p>22 lead me to believe that that vehicle was searched.</p> <p>23 And there was nothing of evidentiary value</p> <p>24 recovered, that I read, in any of the information</p> <p>25 that was provided.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. -- to check on the vehicle or search the</p> <p>2 vehicle?</p> <p>3 A. I don't remember where, but I think that</p> <p>4 evidence technicians were the ones who were called out</p> <p>5 to photograph it.</p> <p>6 Q. To photograph the vehicle?</p> <p>7 A. I believe so.</p> <p>8 Q. Okay. And then did the -- was there any</p> <p>9 indication that the evidence technicians conducted a</p> <p>10 search of the vehicle for bullet casings, for example,</p> <p>11 or anything else?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 THE WITNESS: I don't believe that I saw any</p> <p>14 of that in the documents that I reviewed.</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. But that would be an appropriate thing to do,</p> <p>17 you agree?</p> <p>18 MR. KIVETZ: Objection. Form.</p> <p>19 THE WITNESS: Yes. And I -- I -- again, I --</p> <p>20 I believe that it was done.</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. And if that was done -- I'm sorry. Go ahead.</p> <p>23 A. While it's not documented, it -- it -- police</p> <p>24 officers in a situation like that would search that car.</p> <p>25 Q. And if that was not done -- strike that. If</p>

<p style="text-align: right;">Page 174</p> <p>1 there was not a search of the vehicle, that would be a</p> <p>2 deviation from accepted police practices, fair?</p> <p>3 MR. KIVETZ: Objection. Form. He just says -</p> <p>4 - he just said that he believes that the search</p> <p>5 occurred, based upon the normal practices and it</p> <p>6 wasn't written down. You're assuming the opposite</p> <p>7 when you're asking that question.</p> <p>8 MR. SWAMINATHAN: Exactly. That's a</p> <p>9 hypothetical question. It's called a hypothetical</p> <p>10 question to an expert.</p> <p>11 MR. KIVETZ: So you're admitting it's a</p> <p>12 hypothetical question and it's absolutely useless</p> <p>13 and baseless? All right. Go ahead.</p> <p>14 MR. SWAMINATHAN: It's not. It's not, because</p> <p>15 you --</p> <p>16 MR. KIVETZ: Objection to form.</p> <p>17 MR. SWAMINATHAN: -- you have a whole fucking</p> <p>18 file that doesn't have that in it anywhere. It's</p> <p>19 completely made-up nonsense. It's completely made-</p> <p>20 up nonsense.</p> <p>21 MR. KIVETZ: All right.</p> <p>22 MR. SWAMINATHAN: It's completely made-up</p> <p>23 nonsense. I'm going to cross him on exactly this</p> <p>24 point in trial --</p> <p>25 MR. KIVETZ: -- that police officers --</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. KIVETZ: It's nonsense.</p> <p>2 MR. SWAMINATHAN: -- it should be taken</p> <p>3 seriously, right, Mr. Andreu?</p> <p>4 MR. KIVETZ: It's -- I can't take your stuff</p> <p>5 seriously, because of this shit that you do.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. Mr. Andreu, this is a homicide investigation;</p> <p>8 it should be taken seriously, right?</p> <p>9 A. Yes, sir.</p> <p>10 MR. KIVETZ: Objection to form.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. And you consider a witness saying that they</p> <p>13 were told which picture to pick out of a lineup; do you</p> <p>14 consider that to be a minor issue?</p> <p>15 MR. KIVETZ: Objection to form.</p> <p>16 THE WITNESS: Let me back up, I'm going to --</p> <p>17 I'm going to answer it. The -- the investigation</p> <p>18 of the case itself is very important. That was</p> <p>19 your previous question. Now, what was the last</p> <p>20 one?</p> <p>21 BY MR. SWAMINATHAN:</p> <p>22 Q. The next question is: If there are witnesses</p> <p>23 who say that they were told what picture to pick out of</p> <p>24 a lineup, would that be a minor issue to you, as Counsel</p> <p>25 just characterized it?</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. SWAMINATHAN: -- because it's such a joke.</p> <p>2 MR. KIVETZ: -- that police officers who bring</p> <p>3 in a car don't search it --</p> <p>4 MR. SWAMINATHAN: Show me where --</p> <p>5 MR. KIVETZ: -- for security --</p> <p>6 MR. SWAMINATHAN: -- show me the document that</p> <p>7 they searched the vehicle.</p> <p>8 MR. KIVETZ: -- just to take photos? They</p> <p>9 don't take a look in the back seat?</p> <p>10 MR. SWAMINATHAN: Yeah.</p> <p>11 MR. KIVETZ: Because it wasn't written down,</p> <p>12 you're assuming it wasn't done?</p> <p>13 MR. SWAMINATHAN: That's what's so stupid</p> <p>14 about it.</p> <p>15 MR. KIVETZ: Oh, my God.</p> <p>16 MR. SWAMINATHAN: Why wouldn't they document</p> <p>17 whether or not they found anything in the vehicle?</p> <p>18 MR. KIVETZ: You want every little thing to</p> <p>19 document, every little thing, so you can later on</p> <p>20 just nuance it and then just find a problem with</p> <p>21 that. That's just all you do, nitpick little stuff</p> <p>22 and make it seem bigger than it actually is. And</p> <p>23 you know it.</p> <p>24 MR. SWAMINATHAN: It's a homicide</p> <p>25 investigation --</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. KIVETZ: I didn't characterize that.</p> <p>2 That's not exactly -- that is not even close to</p> <p>3 what I said. This is the stuff that you do.</p> <p>4 MR. SWAMINATHAN: You say that all we do is</p> <p>5 pick on small issues?</p> <p>6 MR. KIVETZ: This is the exact nonsense that</p> <p>7 you do. That makes zero sense. You just assume</p> <p>8 that's the particular part that I was talking</p> <p>9 about.</p> <p>10 MR. SWAMINATHAN: No. You said, "All you do</p> <p>11 is pick on small issues." I've been talking about</p> <p>12 all these issues.</p> <p>13 MR. KIVETZ: This is ridiculous.</p> <p>14 MR. SWAMINATHAN: So you're telling me all</p> <p>15 these issues are small issues?</p> <p>16 MR. KIVETZ: This is ridiculous. Don't drag</p> <p>17 me into your questions.</p> <p>18 MR. SWAMINATHAN: No, you're asking me --</p> <p>19 you're talking about a bunch of --</p> <p>20 MR. KIVETZ: Don't drag me into your</p> <p>21 questions. Stop.</p> <p>22 MR. SWAMINATHAN: -- I'm asking about whether</p> <p>23 you think what I'm doing is bogus.</p> <p>24 MR. KIVETZ: Stop. Ask a regular question</p> <p>25 that you can actually use in front of a trial</p>

<p style="text-align: right;">Page 178</p> <p>1 judge. Ask it and move on.</p> <p>2 MR. SWAMINATHAN: I'm going to ask each of</p> <p>3 these questions because they're so obviously</p> <p>4 relevant in a case that stinks.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Does this -- Mr. Andreu, did -- does anything</p> <p>7 about this case just sit -- doesn't sit right with you?</p> <p>8 MR. KIVETZ: Objection. Form, foundation.</p> <p>9 Speculative.</p> <p>10 THE WITNESS: No. I think that the detectives</p> <p>11 did a good job.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. They did a great job. And you felt they did a</p> <p>14 great job in the Reyes case, too, right?</p> <p>15 MR. KIVETZ: Objection. Form. Harassing. All</p> <p>16 right. I'm -- we need a break, clearly. We'll</p> <p>17 take five minutes.</p> <p>18 THE REPORTER: All right. We're off the</p> <p>19 record. The time is 1:50.</p> <p>20 (OFF THE RECORD)</p> <p>21 THE REPORTER: We are back on the record for</p> <p>22 the deposition of Nelson Andreu being conducted by</p> <p>23 videoconference. My name is Sydney Little. Today</p> <p>24 is May 12th, 2023, and the time is 1:56 p.m.</p> <p>25 Central.</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Yes, sir.</p> <p>2 Q. Is that a small issue?</p> <p>3 A. No.</p> <p>4 Q. And if that allegation is true, you would find</p> <p>5 that to be serious misconduct in a homicide</p> <p>6 investigation. Is that fair?</p> <p>7 A. That they pointed to the suspect in the</p> <p>8 lineup? Yes, sir.</p> <p>9 Q. Okay. And do you have an understanding of how</p> <p>10 many years of life were taken from the 40 men who had</p> <p>11 their convictions thrown out involving Detective</p> <p>12 Guevara?</p> <p>13 MS. MCGRATH: Objection. Form.</p> <p>14 THE WITNESS: Do I have what?</p> <p>15 BY MR. SWAMINATHAN:</p> <p>16 Q. Any idea how many years of life were taken</p> <p>17 from these 40 men who sat in prison and that had their</p> <p>18 convictions later thrown out?</p> <p>19 A. No, I don't have the totality.</p> <p>20 Q. Do you have an understanding of how long</p> <p>21 Thomas Sierra spent in prison before his conviction was</p> <p>22 thrown out?</p> <p>23 MR. KIVETZ: Objection to form and foundation.</p> <p>24 MS. MCGRATH: Objection to form.</p> <p>25 THE WITNESS: I think it was 20-some years.</p>
<p style="text-align: right;">Page 179</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Mr. Andreu?</p> <p>3 A. Yes, sir.</p> <p>4 Q. If Mr. Guevara and Halvorsen falsified police</p> <p>5 reports as Mr. Malczyk testified to, would that be a big</p> <p>6 deal to you?</p> <p>7 MR. KIVETZ: Objection. Form.</p> <p>8 THE WITNESS: Yes, that would be improper.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Okay. Is that something that you take very</p> <p>11 seriously?</p> <p>12 A. Yes.</p> <p>13 MR. KIVETZ: Objection. Form.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Is that a minor issue to you?</p> <p>16 MR. KIVETZ: Objection to form.</p> <p>17 THE WITNESS: If -- if they -- if -- just let</p> <p>18 me -- let me clarify. There's a difference between</p> <p>19 making an -- an error on a report, but to do</p> <p>20 something purposely that could affect the outcome</p> <p>21 is -- is something that's serious. Yes.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. If Detective Guevara or other detectives</p> <p>24 pointed at a specific picture to influence Mr. Melendez,</p> <p>25 is that something you take very seriously?</p>	<p style="text-align: right;">Page 181</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Is that an issue of serious importance and</p> <p>3 gravity to you?</p> <p>4 MR. KIVETZ: Objection. Form.</p> <p>5 MS. MCGRATH: Objection. Form.</p> <p>6 THE WITNESS: If he was not guilty of the</p> <p>7 crime, yes.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. And if he's not guilty of the crime, it's an</p> <p>10 even bigger problem, isn't it?</p> <p>11 MR. KIVETZ: Objection.</p> <p>12 MS. MCGRATH: Same objection.</p> <p>13 THE WITNESS: Of course.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. The stakes in a homicide investigation are</p> <p>16 huge, correct?</p> <p>17 MS. MCGRATH: Objection. Form.</p> <p>18 MR. KIVETZ: Objection.</p> <p>19 THE WITNESS: The stakes, you said?</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Yes?</p> <p>22 A. Yes, sir.</p> <p>23 Q. The stakes are huge for the victim and the</p> <p>24 victim's family, correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 182</p> <p>1 MR. KIVETZ: Objection. Form.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. And the stakes are huge for anybody who's</p> <p>4 suspected and charged and convicted of such a crime,</p> <p>5 correct?</p> <p>6 MR. KIVETZ: Objection.</p> <p>7 MS. MCGRATH: Objection. Form.</p> <p>8 THE WITNESS: Yes, sir.</p> <p>9 BY MR. SWAMINATHAN:</p> <p>10 Q. Should you cut corners in a homicide</p> <p>11 investigation?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 THE WITNESS: No, sir.</p> <p>14 BY MR. SWAMINATHAN:</p> <p>15 Q. Should homicide detectives allow themselves to</p> <p>16 be sloppy in how they conduct a homicide investigation?</p> <p>17 MS. MCGRATH: Objection. Form.</p> <p>18 MR. KIVETZ: Objection. Form.</p> <p>19 THE WITNESS: They should not. No.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Supervisors train their detectives to be</p> <p>22 thorough in their homicide investigations?</p> <p>23 MR. KIVETZ: Objection to form.</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25 BY MR. SWAMINATHAN:</p>	<p style="text-align: right;">Page 184</p> <p>1 THE WITNESS: That prohibited them from doing</p> <p>2 that? No.</p> <p>3 BY MR. SWAMINATHAN:</p> <p>4 Q. Okay. And did you see any evidence that they</p> <p>5 did do that?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: No, sir. I did not.</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. And if they had done that and found Thomas</p> <p>10 Sierra's fingerprints, that would've been useful</p> <p>11 evidence, correct?</p> <p>12 MR. KIVETZ: Objection. Form.</p> <p>13 MS. MCGRATH: Objection. Form.</p> <p>14 THE WITNESS: That would've been additional</p> <p>15 evidence, yes.</p> <p>16 BY MR. SWAMINATHAN:</p> <p>17 Q. Okay.</p> <p>18 A. Let me explain.</p> <p>19 Q. Is it something that in Miami -- strike that.</p> <p>20 MR. KIVETZ: He didn't finish, he's still</p> <p>21 speaking.</p> <p>22 THE WITNESS: You can't date a fingerprint.</p> <p>23 And -- and my -- what I have been reading in these</p> <p>24 Chicago cases is that these gang members frequently</p> <p>25 swap cars, borrow cars, sell cars, buy cars. So if</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Is one of the jobs of the supervisor to make</p> <p>2 sure that officers are not being sloppy and cutting</p> <p>3 corners in a homicide investigation?</p> <p>4 MR. KIVETZ: Objection. Form.</p> <p>5 THE WITNESS: Yes, sir.</p> <p>6 BY MR. SWAMINATHAN:</p> <p>7 Q. In this case, could the detectives have</p> <p>8 searched for fingerprints of Thomas Sierra in the Buick</p> <p>9 Park Avenue?</p> <p>10 MR. KIVETZ: Objection. Form.</p> <p>11 MS. MCGRATH: Objection. Form.</p> <p>12 MR. KIVETZ: Foundation, speculative.</p> <p>13 THE WITNESS: Anything is possible that --</p> <p>14 that they -- they could have. Again, is that</p> <p>15 something that was a big deal because it was not</p> <p>16 done or was it something that fell through the</p> <p>17 cracks? No. But it's something that could have</p> <p>18 been done. Yes.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. Is it some -- is there anything preventing the</p> <p>21 detectives in this case from having dusted the car for</p> <p>22 fingerprints?</p> <p>23 MR. KIVETZ: Objection. Form, foundation,</p> <p>24 speculative.</p> <p>25 MS. MCGRATH: Join.</p>	<p style="text-align: right;">Page 185</p> <p>1 his fingerprint would've been in there and they</p> <p>2 would've asked the -- the latent examiner who</p> <p>3 identified it to Mr. Sierra, when was this</p> <p>4 fingerprint put on there, the day of the murder or</p> <p>5 six weeks later, or two days after the murder?</p> <p>6 There's no way to date it.</p> <p>7 So it would've been additional information,</p> <p>8 but it wouldn't have been, you know, concrete that</p> <p>9 -- that he left that fingerprint the day of the</p> <p>10 shooting or the night of the shooting.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. In Miami, when you conducted homicide</p> <p>13 investigations, if you had a vehicle that was believed</p> <p>14 to have been used in the crime, would you do things like</p> <p>15 dust the vehicle for the fingerprints of your suspects?</p> <p>16 MR. KIVETZ: Objection. Form, foundation,</p> <p>17 speculative, incomplete hypothetical.</p> <p>18 THE WITNESS: Oftentimes, yes.</p> <p>19 BY MR. SWAMINATHAN:</p> <p>20 Q. And would you do things like search the</p> <p>21 vehicle for things like physical evidence that might</p> <p>22 contain DNA or other ways to connect it to the suspect?</p> <p>23 MR. KIVETZ: Objection. Form, foundation,</p> <p>24 speculative, incomplete hypothetical.</p> <p>25 THE WITNESS: Yes, sir.</p>



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1 BY MR. SWAMINATHAN:  
 2 Q. And would you do things in Miami, like have  
 3 that vehicle searched thoroughly for bullet casings that  
 4 could end up in hard-to-reach places?  
 5 MR. KIVETZ: Objection. Form, foundation,  
 6 speculative, incomplete hypothetical.  
 7 THE WITNESS: Yes. Even though he -- the --  
 8 the witnesses said he stuck his gun out the -- the  
 9 -- the door. So that would not be a -- a high  
 10 probability of finding a casing in that car.  
 11 BY MR. SWAMINATHAN:  
 12 Q. What direction do bullet casings usually  
 13 eject, sir?  
 14 MR. KIVETZ: Objection. Form. Object.  
 15 THE WITNESS: I'm not a gun expert, but it  
 16 depends on the weapon.  
 17 BY MR. SWAMINATHAN:  
 18 Q. What was the weapon that was understood to be  
 19 used in this case?  
 20 A. Well, but -- I'm not -- I'm -- it was 9-  
 21 millimeter, but the brand depends on which side the --  
 22 the casing ejects from.  
 23 Q. And do casings usually eject forward or  
 24 backward?  
 25 MR. KIVETZ: Objection. Form.

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1 THE WITNESS: Sir. I -- I don't know enough  
 2 about firearms except, you know, when I have gone  
 3 and they go to the side, I guess.  
 4 BY MR. SWAMINATHAN:  
 5 Q. Did you see any indication in the police  
 6 reports that you reviewed in the Andujar homicide  
 7 investigation that the police had the bar -- Buick Park  
 8 Avenue dusted for fingerprints?  
 9 MR. KIVETZ: Objection. Form.  
 10 THE WITNESS: I did not read that in the  
 11 reports.  
 12 BY MR. SWAMINATHAN:  
 13 Q. Did you see anywhere in the police report that  
 14 you reviewed for the Andujar homicide investigation that  
 15 the detectives collected any physical evidence in the  
 16 vehicle that might be used to connect it to Mr. Montanez  
 17 or Mr. Sierra?  
 18 MR. KIVETZ: Objection. Form.  
 19 THE WITNESS: I did not read that in the  
 20 reports.  
 21 BY MR. SWAMINATHAN:  
 22 Q. How did the vehicle get to the police station?  
 23 A. One of the witnesses, I can't remember which  
 24 one right now, drove it to the police station, if I  
 25 remember correctly.

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1 Q. And in your estimation, should that vehicle  
 2 have been brought in by the police rather than brought  
 3 in by some other third party?  
 4 MR. KIVETZ: Objection. Form. Misstates the  
 5 evidence.  
 6 THE WITNESS: I -- I don't remember right now  
 7 how it was that the vehicle was -- who was in it  
 8 when it was stopped and the -- the -- the location  
 9 where it was, where it was stopped, but it could  
 10 have -- it could have been towed in. It could have  
 11 been driven in by an officer. Or the detectives, I  
 12 guess, felt it proper to have the -- whoever was in  
 13 it, drive it to the police station.  
 14 BY MR. SWAMINATHAN:  
 15 Q. When you were investigating homicides, if you  
 16 had seized a vehicle in the street that you believed to  
 17 have been involved in a murder, would you have somebody  
 18 get in the car and drive it to the police station or  
 19 would you have it towed in?  
 20 MR. KIVETZ: Objection. Form, foundation,  
 21 speculative, incomplete hypothetical.  
 22 THE WITNESS: I would say that the majority of  
 23 the time I would have it towed in.  
 24 BY MR. SWAMINATHAN:  
 25 Q. Why is that?

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1 MR. KIVETZ: Objection. Form, speculative,  
 2 incomplete hypothetical.  
 3 THE WITNESS: Again, police practices and what  
 4 I was taught.  
 5 BY MR. SWAMINATHAN:  
 6 Q. You want to reduce the amount of potential  
 7 contamination, correct?  
 8 MR. KIVETZ: Objection. Form, foundation,  
 9 speculative, incomplete hypothetical.  
 10 THE WITNESS: One of the reasons.  
 11 BY MR. SWAMINATHAN:  
 12 Q. Okay. And it's a homicide investigation, that  
 13 kind of evidence can be extremely important, right?  
 14 MR. KIVETZ: Objection. Form, foundation,  
 15 speculative, incomplete hypothetical.  
 16 THE WITNESS: Yes, sir. It could be.  
 17 BY MR. SWAMINATHAN:  
 18 Q. And you want to get it right?  
 19 MR. KIVETZ: Objection. Form.  
 20 THE WITNESS: Yes, sir.  
 21 BY MR. SWAMINATHAN:  
 22 Q. Stakes are high, right?  
 23 MR. KIVETZ: Objection. Form. Asked and  
 24 answered.  
 25 THE WITNESS: Yes, sir. They are.

<p style="text-align: right;">Page 190</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Go to Page 16 of your report, please.</p> <p>3 A. 1-6?</p> <p>4 Q. Yeah. Thank you.</p> <p>5 A. Okay, sir.</p> <p>6 Q. In Paragraph 75.</p> <p>7 A. Okay.</p> <p>8 Q. There you're citing to the deposition</p> <p>9 testimony of Alberto Rodriguez, correct? From 2009.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So that's one place where you discuss</p> <p>12 the testimony of a witness in this case, right?</p> <p>13 A. Yes.</p> <p>14 Q. That's one case where you discussed the</p> <p>15 deposition testimony of one of the witnesses, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So you discussed the testimony of</p> <p>18 Mr. Rodriguez in 2009. Do you discuss anywhere in your</p> <p>19 report, any subsequent testimony that he gave?</p> <p>20 A. I don't believe so. No, sir.</p> <p>21 Q. And you discussed the testimony of</p> <p>22 Mr. Rodriguez in 2009. Do you discuss any of the</p> <p>23 deposition testimony of Jose Melendez in your report?</p> <p>24 MR. KIVETZ: Objection. Asked and answered</p> <p>25 multiple times.</p>	<p style="text-align: right;">Page 192</p> <p>1 any of the other witnesses? That is correct.</p> <p>2 Again, I -- I put -- I -- I noted what Rodriguez</p> <p>3 had said in his deposition to show that the</p> <p>4 detectives had the right individual, Mr. Sierra.</p> <p>5 And that -- that the credibility of what the</p> <p>6 witnesses were saying, whether it be Rodriguez or</p> <p>7 Melendez or whoever it was.</p> <p>8 Again, it's not up to me to decide. The --</p> <p>9 the -- the Court or the jury will read, like I did,</p> <p>10 the totality of it and come to a decision on who</p> <p>11 they determine is truthful or not truthful.</p> <p>12 BY MR. SWAMINATHAN:</p> <p>13 Q. In this case, sir, I have two invoices from</p> <p>14 you that add up to approximately \$45,000. Is that --</p> <p>15 sound about right in terms of the amount of time you</p> <p>16 spent preparing your expert report in this case?</p> <p>17 A. That sounds about right. Yes, sir.</p> <p>18 Q. Okay. And what portion of your time that you</p> <p>19 spent on this case did you spend on reviewing the</p> <p>20 documents as opposed to writing your report?</p> <p>21 A. Probably 90 percent.</p> <p>22 Q. 90 percent was on reviewing the documents?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. All right. Let's mark -- are we at</p> <p>25 Exhibit 4?</p>
<p style="text-align: right;">Page 191</p> <p>1 BY MR. SWAMINATHAN:</p> <p>2 Q. Okay. I'll ask you a different question. Why</p> <p>3 did you refer to the deposition testimony of</p> <p>4 Mr. Rodriguez in your report, but not the deposition</p> <p>5 testimony of Mr. Melendez anywhere in your report?</p> <p>6 MR. KIVETZ: Objection. Form.</p> <p>7 THE WITNESS: I was offering an opinion to</p> <p>8 show the testimony of one of the witnesses to have</p> <p>9 -- to remain until 2009, sure that it was</p> <p>10 Mr. Sierra that had committed the crime.</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. And so you credited Mr. Rodriguez's 2009</p> <p>13 testimony?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. But you didn't credit Mr. Melendez'</p> <p>16 testimonies in his depositions for purposes of your</p> <p>17 opinions, correct?</p> <p>18 MR. KIVETZ: Objection. Form, foundation. I</p> <p>19 mean, asked multiple times, and he has explained to</p> <p>20 you, he's looked at the totality of the</p> <p>21 circumstances. And assumed --</p> <p>22 THE WITNESS: Specifically --</p> <p>23 MR. KIVETZ: -- the trier of fact considers</p> <p>24 one thing, then his opinions would change.</p> <p>25 THE WITNESS: So specifically no testimony of</p>	<p style="text-align: right;">Page 193</p> <p>1 THE REPORTER: We are at 3</p> <p>2 MR. SWAMINATHAN: At 3. I thought I made the</p> <p>3 Tiderington report Exhibit 3. No?</p> <p>4 THE REPORTER: You didn't mark it, but we can.</p> <p>5 MR. SWAMINATHAN: Okay. Let's mark that as</p> <p>6 Exhibit 3. I may have made a mistake.</p> <p>7 (EXHIBIT 3 MARKED FOR IDENTIFICATION)</p> <p>8 BY MR. SWAMINATHAN:</p> <p>9 Q. Okay. Let's see. Do you have your invoices</p> <p>10 in front of you? Just because the sharing screen seems</p> <p>11 to be a problem.</p> <p>12 A. No, but I can bring them up on my computer.</p> <p>13 Just a moment.</p> <p>14 Q. Okay. Should I try putting it up real quick?</p> <p>15 Because I think we're going to go fast. Let me see if</p> <p>16 it works for me to put it up. And if it doesn't, you</p> <p>17 can find it. Are you getting -- can you hear me okay?</p> <p>18 Are we getting -- is it freezing a little? Yep.</p> <p>19 MR. KIVETZ: It's freezing on us.</p> <p>20 BY MR. SWAMINATHAN:</p> <p>21 Q. Okay. I'm taking it off.</p> <p>22 A. Again. I can't hear. Lost the video. Did</p> <p>23 everything --</p> <p>24 MR. KIVETZ: I think he's just taking a break.</p> <p>25 THE WITNESS: Oh, okay.</p>

<p style="text-align: right;">Page 194</p> <p>1 MR. KIVETZ: Just a child issue. It's okay.</p> <p>2 BY MR. SWAMINATHAN:</p> <p>3 Q. Sorry. I'm in my daughter's room. That's my</p> <p>4 office. This is what I've been relegated to.</p> <p>5 A. No, I can't -- hold on. Because now it locked</p> <p>6 up my thing here. Hold on. Wow. Okay.</p> <p>7 Q. You have it, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. What do you need me to bring up?</p> <p>11 Q. Your two invoices that I'm -- I have a January</p> <p>12 invoice and a December invoice.</p> <p>13 A. January and December. Here is December.</p> <p>14 MR. KIVETZ: Wait, the December invoice? 160,</p> <p>15 Andreu 160?</p> <p>16 MR. SWAMINATHAN: Yeah, I have it as Andreu 2</p> <p>17 -- Andreu 1 and 2. I think they were in the one</p> <p>18 that was sent to me last night and the 1 through</p> <p>19 251 that was sent yesterday, or last few days ago.</p> <p>20 MR. KIVETZ: McIntosh billings?</p> <p>21 MS. FLEMING: No, it's the subpoena response.</p> <p>22 BY MR. SWAMINATHAN:</p> <p>23 Q. Subpoena response. Yeah. It's basically</p> <p>24 Pages 1 and 2 of the subpoena response that was sent to</p> <p>25 us, I think probably four or five days ago or Something.</p>	<p style="text-align: right;">Page 196</p> <p>1 (EXHIBIT 4 MARKED FOR IDENTIFICATION)</p> <p>2 A. Yes. Let me go back to the other one. What</p> <p>3 is -- November? This one is December. Okay. Yes. One</p> <p>4 for \$7,875, and one for \$36,225, correct.</p> <p>5 BY MR. SWAMINATHAN:</p> <p>6 Q. Okay. Thank you. Do you have any other bills</p> <p>7 for the Thomas Sierra matter?</p> <p>8 A. I have a pending invoice for work that I've</p> <p>9 done in preparation for the deposition.</p> <p>10 Q. Okay.</p> <p>11 A. That has not been submitted.</p> <p>12 Q. Thank you. These -- Exhibit 4 containing</p> <p>13 these two invoices from December and January, are -- do</p> <p>14 these invoices reflect all the time you spent on the</p> <p>15 Sierra case through the time of completing your expert</p> <p>16 report?</p> <p>17 A. Let me look at this. Yes, sir. I believe</p> <p>18 that's two -- those are the -- those are the two, and</p> <p>19 again, the one that's pending that has not been</p> <p>20 submitted.</p> <p>21 Q. Okay. And to just -- I'm just going to ask a</p> <p>22 couple precise questions. The two bills in Exhibit 4,</p> <p>23 all of the time that's listed in these two exhibits, in</p> <p>24 these two invoices, was time spent on your expert</p> <p>25 report. Is that fair?</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Okay. The January one is for \$7,875.</p> <p>2 Q. Yes. Thank you. And then the December one is</p> <p>3 for \$36,225. Do you see that?</p> <p>4 A. Hold on. Here.</p> <p>5 Q. You have it, Mr. Andreu?</p> <p>6 A. No, I'm looking here. I show a different one.</p> <p>7 Let me make sure. Whoops. Okay. The one that's dated</p> <p>8 December 1st --</p> <p>9 Q. Yes, sir.</p> <p>10 A. -- is -- is for the work done in November.</p> <p>11 Q. Correct. And that bill is for 36,225,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let's -- and then you have the other</p> <p>15 bill too, the January 2nd bill?</p> <p>16 A. Yes.</p> <p>17 Q. For work in December. Okay. So let me --</p> <p>18 let's go out -- let's do it on the record properly here.</p> <p>19 Okay. So let me ask you the questions. So Mr. Andreu,</p> <p>20 I'm showing you a document, marking it as Exhibit 4. And</p> <p>21 it's Bates-stamped Andreu 1 and Andreu 2. And these are</p> <p>22 invoices that -- for the Sierra v. Guevara, et al.,</p> <p>23 case. One is dated January 2nd, 2023, and one is dated</p> <p>24 December 1st, 2022. Are these your invoices related to</p> <p>25 the Thomas Sierra matter?</p>	<p style="text-align: right;">Page 197</p> <p>1 A. No. The -- the expert report is towards the</p> <p>2 end where it says, "Began report," and then --</p> <p>3 MR. KIVETZ: Don't -- no --</p> <p>4 BY MR. SWAMINATHAN:</p> <p>5 Q. No, no. I'm sorry. Sorry, Mr. Andreu. Yeah.</p> <p>6 First, the version we have, that has redactions on it,</p> <p>7 so I don't want you to tell me what's contained on the</p> <p>8 left-hand column of the report.</p> <p>9 A. Okay.</p> <p>10 Q. And let me try to be -- let me ask a better</p> <p>11 question. I think I understand where we're crossing</p> <p>12 paths here. You basically spent time reviewing</p> <p>13 materials and writing a report, is that fair?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. The Exhibit 4, consisting of your two</p> <p>16 invoices, is all of the time on these two invoices</p> <p>17 related to your review of documents and report writing</p> <p>18 in the Sierra matter?</p> <p>19 A. Yes. But again, while I am writing my report,</p> <p>20 I may go back -- and I frequently do -- to go back and</p> <p>21 review additional things. So it's not -- I'm just not</p> <p>22 typing out -- typing out the report. So I go back and</p> <p>23 forth.</p> <p>24 Q. Okay. But ultimately, the -- if I added up</p> <p>25 the total number of hours on these two invoices, which</p>

<p style="text-align: right;">Page 198</p> <p>1 is 126 total hours, that's the amount of time you spent</p> <p>2 reviewing materials and generating your report, fair?</p> <p>3 A. Yes. That's fair.</p> <p>4 Q. Okay. And then there is not any additional</p> <p>5 time that you spent preparing your report that's not</p> <p>6 captured on these two invoices, is that also fair?</p> <p>7 A. Fair.</p> <p>8 Q. Okay. Are you -- you have previously worked</p> <p>9 on cases involving the City of Chicago in McIntosh,</p> <p>10 Brown, and Reyes, Solaches, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Are you working on any other cases for the</p> <p>13 Chicago Police Department?</p> <p>14 A. Not --</p> <p>15 MR. KIVETZ: Objection. Form. Hold on, Tony</p> <p>16 (phonetic), don't -- I'm going to advise not to</p> <p>17 answer that question.</p> <p>18 BY MR. SWAMINATHAN:</p> <p>19 Q. Let me ask this: Are you working on any other</p> <p>20 cases -- are there any other cases on which you've</p> <p>21 worked for the Chicago Police Department in which you've</p> <p>22 disclosed an opinion?</p> <p>23 A. No, just these three.</p> <p>24 Q. Okay. And you've offered an opinion in an El</p> <p>25 Paso case called Villegas, correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 fair?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Yeah. And is that your opinion, that you came</p> <p>4 to the conclusion that the officers did not violate any</p> <p>5 generally accepted practices by not documenting the</p> <p>6 failure to find any evidence in the car?</p> <p>7 A. That is correct.</p> <p>8 Q. Were you aware that the car was transferred in</p> <p>9 between the time of the shooting and the time of</p> <p>10 collection to another individual?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you would agree that transfer would</p> <p>13 contaminate any potential evidence in the car?</p> <p>14 A. Yes, I considered that. And -- and also</p> <p>15 usually when you get a new car, the first thing you do</p> <p>16 is clean it.</p> <p>17 MR. KIVETZ: Let's just take a five-minute</p> <p>18 break. I -- it should be two minutes on it.</p> <p>19 THE WITNESS: Okay. Okay.</p> <p>20 THE REPORTER: Okay. We're off the record.</p> <p>21 The time is 2:20.</p> <p>22 (OFF THE RECORD)</p> <p>23 THE REPORTER: We are back on the record for</p> <p>24 the deposition of Nelson Andreu being conducted by</p> <p>25 videoconference. My name is Sydney Little. Today</p>
<p style="text-align: right;">Page 199</p> <p>1 A. Yes, sir.</p> <p>2 Q. And is that also a wrongful conviction case?</p> <p>3 A. I only was asked to provide an opinion on the</p> <p>4 actions of a police officer, a uniformed police officer</p> <p>5 who had nothing to do with the actual investigation.</p> <p>6 Q. Okay. Are you working on any other cases</p> <p>7 outside the City of Chicago in your capacity as an</p> <p>8 expert?</p> <p>9 MR. KIVETZ: Objection. Form. Where he's</p> <p>10 provided a report?</p> <p>11 BY MR. SWAMINATHAN:</p> <p>12 Q. Yeah. That fair. I'm not -- I think that</p> <p>13 that's fair. Where you provided a report?</p> <p>14 A. No, sir.</p> <p>15 MR. SWAMINATHAN: I have no further questions.</p> <p>16 CROSS-EXAMINATION</p> <p>17 BY MR. KIVETZ:</p> <p>18 Q. Mr. Andreu, I just have a quick couple of</p> <p>19 questions and then we'll take a break, and then I think</p> <p>20 we should be done. Before things kind of went off the</p> <p>21 rails, you were discussing your opinion that you</p> <p>22 believed the officers did not violate any generally</p> <p>23 accepted practices by not documenting a failure or an</p> <p>24 inability to find any shells, bullet shells, in the car</p> <p>25 that matched the description of the shooting. Is that</p>	<p style="text-align: right;">Page 201</p> <p>1 is May 12th, 2023 and the time is 2:25 p.m.</p> <p>2 Central.</p> <p>3 MR. KIVETZ: I'm -- I have no further</p> <p>4 questions.</p> <p>5 MS. BARBER: I don't have any questions.</p> <p>6 MS. MCGRATH: I don't have any questions</p> <p>7 either. Thank you.</p> <p>8 MR. SWAMINATHAN: No more questions from me.</p> <p>9 Thank you, Mr. Andreu.</p> <p>10 THE REPORTER: Let me get orders while we're</p> <p>11 on the record. Anand, would you like a copy of the</p> <p>12 transcript?</p> <p>13 MR. SWAMINATHAN: No. Thank you.</p> <p>14 THE REPORTER: How about the video?</p> <p>15 MR. SWAMINATHAN: No, thank you.</p> <p>16 THE REPORTER: Okay. Jeff, would you like a</p> <p>17 copy?</p> <p>18 MR. SWAMINATHAN: I think --</p> <p>19 MR. KIVETZ: Same.</p> <p>20 MR. SWAMINATHAN: I think we can short circuit</p> <p>21 it and all this Counsel are not request --</p> <p>22 THE REPORTER: Nobody's ordering. Okay.</p> <p>23 Sounds good. Let me get us off --</p> <p>24 MS. BARBER: Not at this time.</p> <p>25 THE REPORTER: All right. Okay. We're off</p>

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1 the record.  
 2 (DEPOSITION CONCLUDED AT 2:26 P.M. CT)  
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1 CERTIFICATE OF DIGITAL REPORTER  
 2 STATE OF ILLINOIS  
 3  
 4 I do hereby certify that the witness in the foregoing  
 5 transcript was taken on the date, and at the time and  
 6 place set out on the Stipulation page hereof, by me  
 7 after first being duly sworn to testify the truth, the  
 8 whole truth, and nothing but the truth; and that the  
 9 said matter was recorded digitally by me and then  
 10 reduced to typewritten form under my direction, and  
 11 constitutes a true record of the transcript as taken,  
 12 all to the best of my skill and ability. I certify that  
 13 I am not a relative or employee of either counsel and  
 14 that I am in no way interested financially, directly or  
 15 indirectly, in this action.



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SYDNEY LITTLE,  
 DIGITAL REPORTER/NOTARY  
 MY COMMISSION EXPIRES: 03/18/2026  
 SUBMITTED ON: 02/28/2024



<b>Exhibits</b>	<b>110</b> 6:6	<b>1:16</b> 142:13	114:20,23	
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